163 U.S. 625, 631

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 828.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ASHBEL P. FITCH, COMPTROLLER OF THE CITY AND COUNTY OF NEW YORK, AND JAMES B. FRY, WILLIAM G. HAMILTON, AND GEORGE L. GILLESPIE, EXECUTORS OF GEORGE W. CULLUM, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED DECEMBER 20, 1895.

(16118.)

pages in the matter of the appraisal for taxation of the estate of William W. Merriam, deceased, with the original filed in this office, and that the same are a true and complete transcript of the record of the proceedings in such case and of the whole thereof.

Witness my hand and official seal at Riverhead, N. Y., this 14th day of July, 1894.

[SEAL.] ORANGE T. FANNING, *Cl'k.*

(Indorsed:) Supreme Court of the United Stat's. In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased. Record. John Oakey, United States attorney for the eastern district of New York, Brooklyn, N. Y.

(Indorsement on cover:) Supreme Court U. S., clerk's office, received Jul' 23, 1894. Case No. 15647. Term No. 422. The United States of America, and Clifford B. Ackerly, executor of William W. Merriam, deceased, plaintiffs in error, vs. J. Henry Perkins, county treasurer of Suffolk County, New York. New York supreme court. Filed July 23d, 1894.

163 U.S. 625, 631

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

NO. 828.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ASHBEL P. FITCH, COMPTROLLER OF THE CITY AND COUNTY OF NEW YORK, AND JAMES B. FRY, WILLIAM G. HAMILTON, AND GEORGE L. GILLESPIE, EXECUTORS OF GEORGE W. CULLUM, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED DECEMBER 20, 1895.

(16118.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 828

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ASHBEL P. FITCH, COMPTROLLER OF THE CITY AND COUNTY OF NEW YORK, AND JAMES B. FRY, WILLIAM G. HAMILTON, AND GEORGE L. GILLESPIE, EXECUTORS OF GEORGE W. CULLUM, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Admission of service	3	1
Certificate clerk and return on writ	3	1
Application for writ of error	4	2
Assignment of errors	6	3
Indorsements on application for writ and assignment of errors	8	4
Indorsement on record on appeal of the United States	9	4
Remittitur from New York court of appeals	10	4
Certificate clerk court of appeals	12	5
Index to record	13	5
Index to record	14	5
Index to record	15	5
Petition of William G. Hamilton	16	5
Order of surrogate New York County appointing appraiser	21	8
Report of appraiser	25	9
Order of surrogate on report of appraiser	35	13
Notice of surrogate	38	14
Notice of appeal by United States to the surrogate	39	15
Order of surrogate	41	15
Opinion of surrogate	42	16
Notice of appeal by United States to New York supreme court, general term	46	18
Indorsement on notice of appeal and admission of service	47	18

	Original.	Print.
Notice of appeal to New York supreme court, general term, by executors of George W. Cullum, deceased	48	19
Appendix A, extract from will, George W. Cullum	50	19
Appendix B, act of acceptance by United States	52	20
Certificate of clerk of surrogate's court to record	56	22
Order of affirmance by New York supreme court, general term	57	22
Indorsement thereon	59	23
Affidavit of Charles D. Baker	60	23
Notice of appeal by United States to New York court of appeals	61	23
Indorsement thereon	62	24
Stipulation as to record	63	24
Order on filing remittitur	64	24
Indorsement thereon	66	25
Judgment, March 4, 1895	67	25
Order amending judgment	69	26
Consent to order amending judgment	71	26
Certificate of clerk New York supreme court	72	27
Citation	73	27
Proof of service of citation	74	28

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, on a remittitur from the court of appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the United States of America and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased, appellants, and Ashbel P. Fitch, comptroller of the city and county of New York, respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of
2 a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the ninth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

3 Due and timely service of the within writ of error by service of a true copy thereof is hereby admitted this 17th day of December, 1895.

New York, December 17th, 1895.

[SEAL.] HENRY D. PURROY, *Clk.*

8201——1

SUPREME COURT OF THE STATE OF NEW YORK.

County of New York, ss:

I, Henry D. Purroy, clerk of the supreme court of the State of New York for the county of New York, in the first department, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 4 to 72, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the matter of the estate of George W. Cullum, deceased, in which the United States of America is plaintiff in error and Ashbel P. Fitch, comptroller of the city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased, are defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said supreme court of the State of New York to be hereunto affixed, at the city of New York, in the first judicial department of said court, held in and for the county of New York, this 18 day of December, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

[SEAL.] HENRY D. PURROY, *Clerk.*
M. J. D.

4 WASHINGTON, D. C., *December 9, 1895.*

To the Honorable HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States:

THE UNITED STATES OF AMERICA AND JAMES B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased, appellants,
vs.
ASHBEL P. FITCH, COMPTROLLER OF THE CITY AND county of New York, respondent.

Application for writ of error.

And now come the United States of America, by the Attorney-General, and complain that in the record and proceedings and also in the rendition of the final judgment in the above-entitled cause in the supreme court of the State of New York on a remittitur from the court of appeals of the State of New York, being the highest court of law or equity of the said State of New York in which a decision could be had in said suit, and in which a final judgment was rendered against the said United States of America on the fourth day of March, 1895, whereas by the law of the land the said judgment should have been in favor of the said United States of America, to their great wrong and damage, as will more fully appear from the record and proceedings in said cause, a certified copy of which is herewith presented.

5 Wherefore your petitioner prays for the allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

HOLMES CONRAD,
Acting Attorney-General.

A copy.
[SEAL.] HENRY D. PURROY, *Clerk.*
M. J. D.

6 (Fol. 1.) The Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
against
ASHBEL P. FITCH, COMPTROLLER OF THE CITY and county of New York, James B. Fry, William G. Hamilton, and George L. Gillespie, as executors of the estate of George W. Cullum, deceased, defendants in error.

(Fol. 2) *Assignment of errors.*

Afterwards, to wit, on the day of October, in the year of our Lord eighteen hundred and ninety-five, at the October term of the Supreme Court of the United States, at the Capitol, in the city of Washington and District of Columbia, come the said United States of America, the plaintiff in error, by , their attorney, and say that in the record and proceedings in the above-entitled matter, there is manifest error in this, to wit:

(Fol. 3) First. That a tax has been assessed and confirmed upon a legacy to the United States, bequeathed to them by and under the last will and testament of George W. Cullum, deceased.

Second. That property of the United States has been held liable to taxation by a State.

Third. That the privilege of the United States to acquire
7 (Fol. 4) property has been held liable to taxation by a State.

Fourth. That the United States have been held to be "a body politic or corporate," "or a person," within the meaning of those terms as employed in chapter 215 of the laws of 1891 of the State of New York, and to be bound by a State statute.

Fifth. That such legacy was not held to be exempted from taxation by chapter 553 of the laws of 1890.

Sixth. That the court of appeals of the State of New York
(Fol. 5) erred in affirming the order of the general term of the supreme court of the State of New York entered herein on the 23rd day of February, 1894, affirming the order of the surrogate of the county of New York confirming a tax assessed upon the legacy in question.

Wherefore the said United States prays that the judgment of the supreme court of the State of New York entered upon the remittitur of the said court of appeals of the State of New York affirming the order of the general term of the supreme court of the State of New
(Fol. 6) York, first department, made and entered herein on the 23rd day of February, 1894, may be reversed, annulled, and altogether held for nothing, and that the tax assessed and confirmed upon said legacy be remitted and discharged, and that the United States may be restored to all things which they may have lost by occasion of the said judgment, etc.

HOLMES CONRAD,
Solicitor-General, Attorney for Plaintiff in Error.

A copy.
[SEAL.]
M. J. D.

HENRY D. PURROY, *Clerk.*

8 (Indorsed:) Sir: You will please take notice that a , of which the within is a copy, was this day duly entered in the within entitled action, in the office of the clerk of the . Dated, N. Y., , 189 . Yours, etc., , U. S. attorney, attorney for plaintiff. To , attorney for . U. S. Supreme Court. United States, pl'ff in error, versus Ashbel P. Fitch and others, as executors of the estate of George W. Cullum, deceased, def'ts in error. Application for writ of error and assignment of errors.

9 (Indorsed:) State of New York. Supreme court, first department. In the matter of the appraisement of certain legacies and the assessment thereon of a collateral inheritance tax, under the last will and testament of George W. Cullum, deceased. Record on appeal of the United States from order of the surrogate of New York County. Edward Mitchell, United States attorney for the southern district of New York, attorney for appellants, room 50, P. O. building, New York City, N. Y.

10 COURT OF APPEALS, *State of New York, ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 26th day of February, in the year of our Lord one thousand eight hundred and ninety-five, before the judges of said court. Witness, the Hon. Charles Andrews, chief judge, presiding. Gorham Parks, clerk. Remittitur, Feb. 26th, 1895.

In the matter of the estate of George W. Cullum, deceased.

Be it remembered, that on the 22nd day of June, in the year of our Lord one thousand eight hundred and ninety-four, the United States, the appellant in this action, came here, the court of appeals, by Henry C. Platt, U. S. attorney for the southern district of N. Y., its attorney, and filed in the said court a notice of appeal and return thereto from an order of the general term of the supreme court of the

11 State of New York, and the comptroller of the city and county of New York, the respondent in said action, afterwards appeared in said court of appeals by Benjamin F. Dos Passos, his attorney, which said notice of appeal and the return thereto, as aforesaid, are hereunto annexed. Whereupon the said court of appeals, this cause having been submitted by counsel for the respective parties, and after due deliberation had therein, did order and adjudge that the order of the general term of the supreme court appealed from herein to this court be, and the same hereby is, affirmed with costs.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said order be affirmed with costs as aforesaid.

And hereupon, as well as the notice of appeal and return thereto aforesaid by, them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made

and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

12 COURT OF APPEALS, CLERK'S OFFICE,
Albany, Feb. 26th, 1895.

I hereby certify that the proceeding record contained a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] GORHAM PARKS, *Clerk.*

13 INDEX.

	Page.
Appendix A	35
Appendix B	37
Clerk's certificate	41
Notice of assessment	23
Notice of appeal from order confirming appraiser's report	24
Notice of appeal to general term	31-33
Opinion of surrogate	27
Order appointing appraiser	6
Order confirming report of appraiser	20
Order affirming order of assessment	26
Petition for appointment of appraiser	1
Report of appraiser	10

14 INDEX.

	Page.
Appendix A	35
Appendix B	37
Clerk's certificate	41
Notice of assessment	23
Notice of appeal from order confirming appraiser's report	24
Notice of appeal to general term	31-33
Opinion of surrogate	27
Order appointing appraiser	6
Order confirming report of appraiser	20
Order affirming order of assessment	26
Petition for appointment of appraiser	1
Report of appraiser	10

15 INDEX.

	Page.
Appendix A	35
Appendix B	37
Clerk's certificate	41
Notice of assessment	23
Notice of appeal from order confirming appraiser's report	24
Notice of appeal to general term	31-33
Opinion of surrogate	27
Order appointing appraiser	6
Order confirming report of appraiser	20
Order affirming order of assessment	26
Petition for appointment of appraiser	1
Report of appraiser	10

16 Surrogate's court, city and county of New York. In the matter of the estate of George W. Cullum, deceased. 1

To Hon. ERASTUS S. RANSOM, 2
Surrogate of the County of New York:

The petition of William G. Hamilton respectfully shows:

First. Your petitioner is an executor of the last will and testament of George W. Cullum, deceased, and as such is a person interested in the estate of the above-named decedent.

Second. That the said decedent departed this life on the 28th day
3 of February, 1892, in the city of New York, and that he was a resident of this State.

Third. That said decedent left a last will and testament, which was on the 30th day of April, 1892, duly admitted to probate, and that General James B. Fry, William G. Hamilton, and Col-
4 17 onel George L. Gillespie, are the executors of said will, and that their post-office addresses are: General James B. Fry, No. 30 East Sixty-third street, New York City; William G. Hamilton, No. 105 East Twenty-first street, New York City, and Colonel George L. Gillespie, No. 49 East 53d street, New York City.

Fourth. That, as your petitioner is informed and believes, the property of said decedent passing by said will, or some portion thereof, or some interest therein, is subject to the payment of the tax imposed by the law to tax gifts, legacies, and collateral inheritances in certain cases.

5 Fifth. That all the persons who are interested in said estate, and who are entitled to notice of all proceedings herein, including the comptroller of the city of New York, and their post-office addresses, are as follows, namely:

Theodore W. Myers, comptroller of the city of New York, 280 Broadway, New York City; Gen. James B. Fry, 30 E. 63rd st., N. Y. City; William G. Hamilton, 105 E. 21st st., N. Y. City; Col. George L. Gillespie, 49 E. 53rd st., N. Y. City; Col. George W. Granniss, San Francisco, California; Malvina Hassall, Keokuk,
6 Iowa; William Hassall, Keokuk, Iowa; George Hassall, Keokuk, Iowa; Frederick Hassall, Keokuk, Iowa; Harriet F. Sawyer, San Rafael, California; Henry B. Cullum, Galveston, Texas; Catharine Williams, St. Helena, California; Abby Patriarche, San Francisco, California; Mary Meacham, St. Helena, California; Alfred Cullum, St. Helena, California; George S. Cullum, Meadville, Pennsylvania; Arthur S. Cullum, Chicago, Illinois; Louise Armstrong, Cleveland, Ohio; Harriet Adelaide Loomis, Meadville,
7 18 Pennsylvania; Mary S. Cullum, Meadville, Pennsylvania; Martha S. Cullum, Meadville, Pennsylvania; Charles S. Cullum, Meadville, Pennsylvania; Ellen E. Cullum, Meadville, Pennsylvania; Edgar P. Cullum, Meadville, Pennsylvania; Emma C. Cortazzo, Meadville, Pennsylvania; Katrine Cartazzo, Meadville, Pennsylvania; Arthur Clarke Huidekoper, Meadville, Pennsylvania; Frances Huidekoper, Meadville, Pennsylvania; Charlotte A. Hamilton, 17 W. 20th st., N. Y. City; Adelaide Hamilton, 17 W. 20th st., N. Y. City; Alice Hamilton, 17 W. 20th st., N. Y. City; Charles A. Hamilton, No. 105 Prospect avenue, Milwaukee,
8 Wisconsin; Gen. Schuyler Hamilton, 229 Broadway, N. Y. City; Ellen Cogswell, Westernville, N. Y.; Sarah H. Bussey, Westernville, N. Y.; Peter W. Halleck, Jackson, Michigan; Mrs. Edward R. Platt, care of War Department, Washington, D. C.; Percival Padgett, St. Paul's School, Concord, N. H.; Annie R. M. Dahlgren, Newport, Rhode Island; Eloise H. Thatcher, New London, Conn.; Mrs. Robert N. Scott, care of War Department, Washington, D. C.; Mattie Scott, care of War Department, Washington, D. C.; Abby Scott, care of War Department, Washington, D. C.; Nina Scott,

care of War Department, Washington, D. C.; Mary W. Wootton, 427 Lexington avenue, N. Y. City; Ruth M. Price, 261 Fifth avenue, N. Y. City; Margaret Murphy, 261 Fifth avenue, N. Y. City; Thomas Tuckson, 261 Fifth avenue, N. Y. City; Joseph Jones, 261 Fifth avenue, N. Y. City; Mary Denney, 261 Fifth avenue, N. Y. City; Bridget Durick, 261 Fifth avenue, N. Y. City; Frank Tuckson, 261 Fifth avenue, N. Y. City; The Woman's Hospital, N. Y. City; New York Cancer Hospital, N. Y. City; St. Thomas' Church, in New York City, N. Y. City; The Society in New York City for the Improvement of the Condition of the Poor, 79 Fourth avenue, N. Y. City; Old Ladies' Home in San Francisco, California, San Francisco, California; Library, Art, and Historical Society, of Meadville, Pennsylvania, Meadville, Pennsylvania; Redwood Library, of Newport, Rhode Island, Newport, Rhode Island; Metropolitan Museum of Art in the Central Park of New York City, New York City; Engineer School of Application at Willets Point, N. Y., Willets Point, N. Y.; the Greenwood Cemet'ry, 26 Broadway, N. Y. City.

The Government of the United States.

Peter S. Michie, West Point, N. Y.; Edgar W. Bass, West Point, N. Y.; the Superintendent of the United States Military Academy (John M. Wilson), West Point, N. Y.; the professor of natural and experimental philosophy of the United States Military Academy (Col. Peter S. Michie), West Point, N. Y.; the professor of engineering of the United States Military Academy (Col. James Mercur), West Point, N. Y.; the professor of mathematics of the United States Military Academy (Col. Edgar W. Bass), West Point, N. Y.; the professor of chemistry, mineralogy, and geology of the United States Military Academy (Col. Samuel E. Tillman), West Point, N. Y.; the Association of the Graduates of the United States Military Academy, West Point, N. Y.; American Geographical Society in the City of New York, New York City.

Wherefore, your petitioner prays that you will appoint some competent person as appraiser as provided by law.

And your petitioner will ever pray.

WM. G. HAMILTON.

CITY AND COUNTY OF NEW YORK, ss:

William G. Hamilton, the petitioner named in the foregoing petition, being duly sworn, deposes and says that he has read the foregoing petition subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

WM. G. HAMILTON.

Sworn to before me this 26th day of May, 1892.

FRANK T. WARBURTON,
Notary Public (141), N. Y. Co.

(Endorsed:) (Copy.) Petition. S. P. & J. McL. Nash, attys. for petitioners, 67 Wall street, New York City.

At a surrogate's court held in and for the city and county of New York, at the surrogate's office in the city of New York, on the 27th day of May, in the year one thousand eight hundred and ninety-two.

Present: Hon. Erastus S. Ransom, surrogate.

In the matter of the estate of George W. Cullum, deceased.

On reading and filing the petition of William G. Hamilton praying for the appointment of some competent person as appraiser under and in pursuance of the law to tax gifts, legacies, and collateral inheritances in certain cases.

It is ordered that George P. Webster be, and he hereby is, appointed such appraiser.

It is further ordered that said appraiser shall give the notice required by said law in the manner and at the time therein set forth (and said notice shall be twenty days) to the following persons, and to all other persons known to have or claim an interest in the property of George W. Cullum, the decedent in the above-entitled proceeding, subject to the payment of the said tax, namely:

Theodore W. Myers, comptroller of the city of New York, 280 Broadway, New York City; Gen. James B. Fry, 30 E. 63rd st., N. Y. City; William G. Hamilton, 105 E. 21st st., N. Y. City; Col. George L. Gillespie, 49 E. 53rd st., N. Y. City; Col. George W. Granniss, San Francisco, California; Malvina Hassall, Keokuk, Iowa; William Hassall, Keokuk, Iowa; George Hassall, Keokuk, Iowa; Frederick Hassall, Keokuk, Iowa; Harriet F. Sawyer, San Rafael, California; Henry B. Cullum, Galveston, Texas; Catharine Williams, St. Helena, California; Abby Patriarche, San Francisco, California; Mary Meacham, St. Helena, California; Alfred Cullum, St. Helena, California; George S. Cullum, Meadville, Pennsylvania, Arthur S. Cullum, Chicago, Illinois; Louise Armstrong, Cleveland, Ohio; Harriet Adelaide Loomis, Meadville, Pennsylvania; Mary S. Cullum, Meadville, Pennsylvania; Martha S. Cullum, Meadville, Pennsylvania; Charles S. Cullum, Meadville, Pennsylvania; Ellen E. Cullum, Meadville, Pennsylvania; Edgar P. Cullum, Meadville, Pennsylvania; Emma C. Cortazzo, Meadville, Pennsylvania; Katrine Cortazzo, Meadville, Pennsylvania; Arthur Clarke Huidekoper, Meadville, Pennsylvania; Frances Huidekoper, Meadville, Pennsylvania; Charlotte A. Hamilton, 17 W. 20th st., N. Y. City; Adelaide Hamilton, 17 W. 20th st., N. Y. City; Alice Hamilton, 17 W. 20th st., N. Y. City; Charles A. Hamilton, No. 105 Prospect avenue, Milwaukee, Wisconsin; Gen. Schuyler Hamilton, 229 Broadway, N. Y. City; Ellen Cogswell, Westernville, N. Y.; Sarah H. Bussey, Westernville, N. Y.; Peter W. Halleck, Jackson, Michigan; Mrs. Edward R. Platt, care of War Department, Washington, D. C.; Percival Padgett, St. Paul's School, Concord, N. H.; Annie R. M. Dahlgren, Newport, Rode Island; Eloise H. Thatcher, New London, Conn.; Mrs. Robert N. Scott, care of War Department, Washington, D. C.; Mattie Scott, care of War Department, Washington, D. C.; Abby Scott, care of War

Department, Washington, D. C.; Nina Scott, care of War Department, Washington, D. C.; Mary W. Wootton, 427 Lexington avenue, N. Y. City; Ruth M. Price, 261 Fifth avenue, N. Y. City; Margaret Murphy, 261 Fifth avenue, N. Y. City; Thomas Tuckson, 261 Fifth avenue, N. Y. City; Joseph Jones, 261 Fifth avenue, N. Y. City; Mary Denny, 261 Fifth avenue, N. Y. City; Bridget Durick, 261 Fifth avenue, N. Y. City; Frank Tuckson, 261 Fifth avenue, N. Y. City; The Woman's Hospital, N. Y. City; New York Cancer Hospital, N. Y. City; St. Thomas' Church in New York City; The Society in New York City for the Improvement of the Condition of the Poor, 79 Fourth avenue, N. Y. City; Old Ladies' Home in San Francisco, California, San Francisco, California; Library, Art and Historical Society of Meadville, Pennsylvania, Meadville, Pennsylvania; Redwood Library of Newport, Rhode Island, Newport, Rhode Island; Metropolitan Museum of Art in the Central Park of New York City, New York City; Engineer School of Application at Willets Point, N. Y., Willets Point, N. Y.; The Greenwood Cemetery, 26 Broadway, N. Y. City.

The Government of the United States.

Peter S. Michie, West Point, N. Y.; Edgar W. Bass, West Point, N. Y.; the Superintendent of the United States Military Academy (John M. Wilson), West Point, N. Y.; the professor of natural and experimental philosophy of the United States Military Academy (Col. Peter S. Michie), West Point, N. Y.; the professor of engineering of the United States Military Academy (Col. James Mercur), West Point, N. Y.; the professor of mathematics of the United States Military Academy (Col. Edgar W. Bass), West Point, N. Y.; the professor of chemistry, mineralogy, and geology of the United States Military Academy (Col. Samuel E. Tillman), West Point, N. Y.; the Association of the Graduates of the United States Military Academy, West Point, N. Y.; American Geographical Society in the city of New York, New York City.

ERASTUS S. RANSOM, *Surrogate.*

(Endorsed:) (Copy.) Order. S. P. & J. McL. Nash, attys. for petitioners, 67 Wall street, New York City.

Surrogate's court, county of New York. In the matter of the appraisal of the estate of George W. Cullum, dec'd, under the act in relation to taxable transfers of property. Died February 28, 1892.

To the Surrogate's Court, County of New York:

I, the undersigned, who was by an order, made and entered on the 27th day of May, 1892, appointed appraiser under and in pursuance of the law in relation to taxable transfers of property, a certified copy of which order is hereto attached, respectfully report:

First. That forthwith after my said appointment I gave notice by mail, postage prepaid, to all persons known to have or claim an

interest in all property subject to the tax imposed by said law, and to the following-named persons, being those named by the surrogate in the said order, of the time and place I would appraise the property of George W. Cullum, deceased, subject to the payment of said tax. A true copy of said notice is also hereto attached:

Theo. W. Myers, 280, Broadway, New York City; Gen. James B. Fry, 30 East 63d street, New York City; William G. Hamilton, 105 East 21st street, New York City; Col. George L. Gillespie, 49 East 53d street, New York City; Col. George W. Granniss, San Francisco, Cal.; Malvina Hassall, Keokuk, Iowa; William Hassall, Keokuk, Iowa; George Hassall, Keokuk, Iowa; Frederick Hassall, Keokuk, Iowa; Harriet F. Sawyer, San Rafael, Cal.; Henry B. Cullum, Galveston, Texas; Catharine Williams, St. Helena, Cal.; Abby Patriarche, San Francisco, Cal.; Mary Meacham, St. Helena, Cal.; Alfred Cullum, St. Helena, Cal.; George S. Cullum, Meadville, Penn.; Arthur S. Cullum, Chicago, Ill.; Louise Armstrong, Cleveland, Ohio; Harriet Adelaide Loomis, Meadville, Pa.; Mary S. Cullum, Meadville, Pa.; Martha S. Cullum, Meadville, Pa.; Charles S. Cullum, Meadville, Pa.; Ellen E. Cullum, Meadville, Pa.; Edgar P. Cullum, Meadville, Pa.; Emma C. Cortazzo, Meadville, Pa.; Catharine Cortazzo, Meadville, Pa.; Arthur Clarke Huidekoper, Meadville, Pa.; Francis Huidekoper, Meadville, Pa.; Charlotte A. Hamilton, 17 West 20th street, New York City; Adelaide Hamilton, 17 West 20th street, New York City; Alice Hamilton, 17 West 20th street, New York City; Charles A. Hamilton, 105 Prospect avenue, Milwaukee, Wis.; Gen. Schuyler Hamilton, 229 Broadway, New York City; Ellen Cogswell, Westernville, New York; Sarah H. Bussey, Westernville, New York; Peter W. Halleck, Jackson, Mich.; Mrs. Edward R. Platt, care of War Department, Washington, D. C.; Percival Padgett, St. Paul's School, Concord, N. H.; Annie R. M. Dahlgren, Newport, R. I.; Eloise H. Thatcher, New London, Conn.; Mrs. Robert N. Scott, care of War Department, Washington, D. C.; Mattie Scott, care of War Department, Washington, D. C.; Abby Scott, care of War Department, Washington, D. C.; Nina Scott, care of War Department, Washington, D. C.; Mary W. Wootton, 427 Lexington avenue, New York City; Ruth M. Price, 261 5th avenue, N. Y. City; Margaret Murphy, 261 5th avenue, N. Y. City; Thomas Tuckson, 261 5th avenue, N. Y. City; Joseph Jones, 261 5th avenue, N. Y. City; Mary Denny, 261 5th avenue, N. Y. City; Bridget Durick, 261 5th avenue, N. Y. City; Frank Tuckson, 261 5th avenue, N. Y. City; The Woman's Hospital, New York City; New York Cancer Hospital, New York City; St. Thomas Church in New York City, New York City; The Society in New York City for the Improvement of the Condition of the Poor, 79 4th avenue, New York City; Old Ladies' Home in San Francisco, Cal., San Francisco, Cal.; Library, Art, and Historical Society of Meadville, Penn., Meadville, Penn.; Redwood Library of Newport, R. I., Newport, R. I.; Metropolitan Museum of Art in the Central Park of New York City, New York City.

The Government of the United States, Washington, D. C.

Engineers' School of Application at Willets Point, N. Y., Willets Point, New York; Greenwood Cemetery, 26 Broadway, New
28 York City; Peter S. Michie, West Point, New York; Edgar 37
W. Bass, West Point, New York; the Superintendent of the United States Military Academy (John M. Wilson), West Point, New York; the professor of natural and experimental philosophy of the United States Military Academy (Col. Peter S. Michie), West Point, New York; the professor of engineering of the United States Military Academy (Col. James Mercur), West Point, New York; the professor of mathematics of the United States Military Academy (Col. Edgar W. Bass), West Point, New York; the professor of chemistry, mineralogy, and Geology of the United States Military Academy (Col. Samuel E. Tillman), West Point, New 38
York; The Association of the Graduates of the United States Military Academy, West Point, New York; American Geographical Society of the City of New York, New York City.

Second. I further report that at the time and place in said notice stated, to wit, on the 27th day of June, 1892, at No. 280 Broadway, in the city of New York, and at other and subsequent times and divers places, I appraised all the property, being real and personal property, of said George W. Cullum, deceased, subject to the payment of the said tax, at its fair market value, as follows, to wit: 39

Malvina Hassall, sister, legacy in cash			$35,000.00
William Hassall, nephew, legacy in cash			3,500.00
George Hassall, nephew, legacy in cash			3,500.00
Frederick Hassall, nephew, legacy in cash			3,500.00
Harriet F. Sawyer, niece, legacy in cash			3,500.00
29 Henry B. Cullum, nephew, legacy in cash			$3,500.00 40
Catharine B. Williams, niece, legacy in cash			3,500.00
Abby Patriarche, niece, legacy in cash			3,500.00
Mary Meacham, niece, legacy in cash			3,500.00
Alfred Cullum, nephew, legacy in cash			3,500.00
George S. Cullum, nephew, legacy in cash			3,500.00
Arthur S. Cullum, nephew, legacy in cash			3,500.00
Louise Armstrong, niece, legacy in cash			3,500.00 41
Harriet A. Loomis, niece, legacy in cash			3,500.00
Mary S. Cullum, no relation, legacy in cash			7,000.00
Martha S. Cullum, niece, legacy in cash			3,500.00
Charles S. Cullum, nephew, legacy in cash			3,500.00
Ellen E. Cullum, niece, legacy in cash			3,500.00
Edgar P. Cullum, nephew, legacy in cash			3,500.00
Emma C. Cortazzo, niece:			42
Legacy in cash	$35,000.00		
Specific legacy	100.00		35,100.00
Catharine Cortazzo, grand niece, legacy in cash			3,500.00
Arthur Clarke Huidekoper, nephew, legacy in cash			3,500.00
Frances Huidekoper, no relation, legacy in cash			3,500.00
Charlotte A. Hamilton, no relation, legacy in cash			7,000.00
Adelaide Hamilton, no relation, legacy in cash			7,000.00
30 Alice Hamilton no relation, legacy in cash			$7,000.00 43
Charles A. Hamilton, no relation, legacy in cash			3,500.00
Schuyler Hamilton, no relation, legacy in cash			3,500.00
Sarah H. Bussey, no relation, legacy in cash			3,500.00
Peter W. Halleck, no relation, legacy in cash			3,500.00
Ellen Cogswell, no relation:			
Legacy in cash	$3,500.00		
Specific devise of land	2,200.00		5,700.00
Mrs. Edward R. Platt, no relation, legacy in cash			700.00 44

		Percival Padgett, no relation, legacy in cash		$3,500.00
		Annie R. M. Dahlgren, no relation, legacy in cash		3,500.00
		Eloise H. Thatcher, no relation, legacy in cash		3,500.00
		Mrs. Robert N. Scott, no relation, life estate in $4,200		2,480.00
		Mattie Scott, no relation, 1-3d remainder of trust fund		573.34
		Abby Scott, no relation, 1-3d remainder of trust fund		573.33
		Nina Scott, no relation, 1-3d remainder of trust fund		573.33
45		Mary W. Wooton, no relation, legacy in cash		7,000.00
		Ruth M. Price, no relation, legacy in cash		700.00
		Margaret Murphy, no relation, legacy in cash		700.00
		Thomas Tuckson, no relation, legacy in cash		700.00
		Old Ladies' Home in San Francisco, Cal., legacy in cash		3,500.00
		Library, Art, and Historical Society of Meadville, Penn., legacy in cash		3,500.00
46	31	Redwood Library of Newport, R. I., legacy in cash		3,500.00
47		The Superintendent of the United States Military Academy, and the professors of natural and experimental philosophy, of engineering, of mathematics, and of chemistry, mineralogy, and geology of the United States Military Academy, in trust, to invest the same and keep it invested and apply the income to procuring statues, busts, mural tablets, and painted portraits of distinguished officers and graduates of the United States Military Academy, and place the same in the Memorial Hall, to be built in the vicinity of West Point, New York		14,000.00
48		The Superintendent of the United States Military Academy, and the professors of natural and experimental philosophy, of engineering, mathematics, and of chemistry, mineralogy, and geology of the United States Military Academy, in trust, to establish a permanent fund on the following terms and conditions, namely, that from the income thereof they shall cause to be prepared and published in the year 1900, and decennially thereafter, General Cullum's Biographical Register of the Officers and Graduates of the United States Military Academy at West Point, New York		14,000.00
		The Association of the Graduates of the United States Military Academy, legacy in cash		7,000.00
		William G. Hamilton, no relation:		
		Specific legacy	$1,475.20	
		Legacy in cash	1,700.02	3,175.22
49	32	Being that part of legacy given in lieu of commissions, which exceeds the amount of said commissions.		
		United States Government, legacy in cash	175,000.00	
		In trust to erect a memorial hall at West Point, N. Y., specific legacy	100.00	175,100.00
50		There being no decision upon the liability of the United States Government to taxation upon transfers under the laws of 1885, chapter 483, and the acts amendatory thereof, I have, on the claim of the Comptroller, reported such transfer, subject to taxation.		
		Testator's gross estate amounts to		514,698.07
		From which should be deducted debts	$1,000.00	
		Administration expenses	5,957.27	
		51 legacies in cash, as above reported	432,200.02	
		3 specific legacies, as above reported	1,675.20	
		Specific devise of land, as above reported	2,200.00	
51		James B. Fry, no relation:		
		Legacy in cash	3,500.00	
		Specific legacy	1,575.20	5,075.20
		Being in lieu of commission, amounting to	5,299.98	
		William G. Hamilton, no relation, commission as executor		5,299.98
		George L. Gillespie, no relation:		
		Legacy in cash	3,500.00	
		Specific legacy	1,475.20	4,975.20
		In lieu of commissions.		
52	33	George W. Grannis, no relation:		
		Legacy in cash	$3,500.00	
		Specific legacy	1,475.20	$4,975.20
		In lieu of commissions.		
		Joseph Jones, no relation, legacy in cash		350.00
		Mary Denny, no relation, legacy in cash		350.00
		Bridget Durick, no relation, legacy in cash		350.00
		Frank Tuckson, no relation, legacy in cash		140.00

The Women's Hospital, legacy in cash	$4,200.00	53
N. Y. Cancer Hospital, legacy in cash	7,000.00	
St. Thomas' Church, legacy in cash	3,500.00	
Society for the Improvement of the Condition of the Poor, legacy in cash	3,500.00	
Metropolitan Museum of Art, legacy in cash	14,000.00	
Greenwood Cemetery, legacy in cash	350.00	
American Geographical Society, legacy in cash	3,500.00	54
Engineer's School of Application at Willets Point, N. Y., specific legacy	100.00	
Legacy in trust to James B. Fry, Peter S. Michie, and Edgar V. Bass, to purchase land for the site of a memorial hall in the vicinity of West Point, New York. This legacy vests only upon the failure of the United States to accept the legacy as above reported, and the tax cannot be determined at this time	14,000.00	

34 Testator, by the terms of his will, left general legacies, amounting to $713,200. The amount of testator's estate, applicable to the payment of such general legacies, amounts to $499,240. The said general legacies abate 30 per cent. The testator left a general legacy in cash of $6,000 in trust for the benefit of Mrs. Robert N. Scott, for life, the remainder to her three daughters, share and share alike. The said legacy abating 30 per cent, leaves the said legacy $4,200. 55

The life estate in the said amount equals $2,480; the remainder equals $1,720; one-third of the remainder equals $573.33. 56

Dated, New York, November 22nd, 1892.

Respectfully submitted,

GEO. P. WEBSTER, *Appraiser.*

(Endorsed:) Filed 22d November, 1892. 57

35 At a surrogate's court, held in and for the city and county of New York, at the surrogate's office in the city of New York, on the 17th day of January, 1893. 58

Present, Hon. Frank T. Fitzgerald, surrogate.

In the matter of the estate of General George W. Cullum, deceased. 59

On reading and filing the report of George P. Webster, the appraiser herein, it is ordered:

First. That the cash value at this date of the property mentioned and described in said report, which is subject to the payment of the tax imposed by law in relation to taxable transfers of property, is as follows:

* * * * * * *

The superintendent of the United States Military Academy, and the professors of natural and experimental philosophy, of engineering, of mathematics, and of chemistry, mineralogy and geology of the United States Military Academy, in trust, to invest the same and keep it invested, and apply the income to procuring statues, busts, mural tablets, and painted portraits of distinguished officers and graduates of the United States Military Acad-		60
36 emy, and place the same in the memorial hall to be built in the vicinity of West Point, N. Y.	$14,000.00	61

The Superintendent of the United States Military Academy, and the professors of natural and experimental philosophy, of engineering, of mathematics and of chemistry, mineralogy, and geology of the United States Military Academy, in trust, to establish a permanent fund on the following terms and conditions, namely: That from the income thereof they shall cause to be prepared and published in the year 1900, and decennially thereafter, "General Cullum's Biographical Register of the Officers and Graduates of the United States Military Academy at West Point, N. Y."..... $14,000.00

Association of Graduates of the United States Military Academy... 7,000.00

* * * * * * *

United States Government..... 175,100.00

Second. That the tax to which the said property is liable is as follows, namely:

* * * * * * *

On interest of the Superintendent of the United States Military Academy, and the professors of natural and experimental philosophy, of engineering, of mathematics and of chemistry, mineralogy, and geology of the United States Military Academy, in trust, to invest the same and keep it invested, and apply the income to procuring statues, busts, mural tablets, and painted portraits of distinguished officers and graduates of the United States Military Academy, and place the same in the memorial hall to be built in the vicinity of West Point, N. Y.... $700.00

On interest of the Superintendent of the United States Military Academy, and the professors of natural and experimental philosophy, of engineering, of mathematics and of chemistry, mineralogy, and geology of the United States Military Academy, in trust, to establish a permanent fund on the following terms and conditions, namely: That from the income thereof they shall cause to be prepared and published in the year 1900, and decennially thereafter, "General Cullum's Biographical Register of the Officers and Graduates of the United States Military Academy at West Point, N. Y."..... 700.00

On interest of Association of the Graduates of the United States Military Academy..... 350.00

* * * * * * *

On interest of United States Government..... 8,755.00

FRANK T. FITZGERALD, *Surrogate.*

Original filed Jany. 17, 1893.

A true copy.

[L. S.] JAMES F. McLAUGHLIN,
Clerk of the Surrogate's Court.

38 Form S. S. Surrogate's court, city and county of New York. In the matter of the estate of General George W. Cullum, deceased.

You are hereby notified that I have by order made the 17th day of January, 1893, assessed and fixed the cash value of such interest, estate, legacy, or property as you and each of you are entitled to receive from or out of the estate left by said General George W. Cullum, deceased, and the amount of the tax to which the same is liable under chapter 483 of the laws of 1885, and the acts amendatory thereof and supplemental thereto, as follows:

Beneficiary.	H....interest or estate.	Cash value thereof.	Tax assessed thereon.
United States Government.....		$175,000.00	$8,755.00

To United States Government.

FRANK T. FITZGERALD, *Surrogate.*

39 Surrogate's court, county of New York. In the matter of 70
the estate of General George W. Cullum, deceased.

SIR: Please take notice that the United States, being dissatisfied 71
with the appraisement, assessment, and determination in the above-entitled proceeding, and the order made and entered herein, dated the 17th day of January, 1893, appeal therefrom to the surrogate of the county of New York, pursuant to chapter 483 of the laws of New York of 1885, and the acts amendatory thereof and supplementary thereto; and the grounds upon which said appeal is taken are as follows:

1. The report of the appraiser herein is erroneous, inasmuch as it states that said legacy to the Government of the United States is 72
in trust, while, in fact, such legacy is bequeathed directly to said Government of the United States.

2. That said legacy to the Government of the United States is wholly exempt and free from any tax under chapter 483 of the laws of 1885 of the State of New York, or the acts amendatory thereof or supplementary thereto.

3. That the Government of the United States is not a body politic or corporate within the provisions of the said laws of the State of New York.

40 4. That said legacy to the Government of the United States 73
is not liable to taxation by any act of the legislature of the State of New York.

5. That the State of New York has no power to tax any real or personal property of the United States.

6. That the Government of the United States, even if a body corporate or politic, is exempted from taxation by chapter 553 of the laws of 1890 of the State of New York.

7. Even if the legacy is to the United States in trust, as found by the appraiser, it is in trust for the use of the incorporated society 74
known as "The Association of the Graduates of the United States Military Academy," which corporation is also exempted from taxation by chapter 553 of the laws of 1890 of the State of New York.

Dated February 27th, 1893.

Yours, &c.,

EDWARD MITCHELL,
United States Attorney and Attorney for Appellant.

To the surrogate of the county of New York, the clerk of the 75
surrogate's court, and the comptroller of the county of New York.

(Endorsed:) Filed March 7th, 1893.

41 At a surrogate's court, held in and for the city and county 76
of New York, at the new county court-house, on the 30th day of September, 1893.

Present: Hon. Frank T. Fitzgerald, surrogate.

In the matter of the estate of George W. Cullum, deceased. 77

An order having been entered herein on the 17th day of February, 1893, confirming the report of the appraiser appointed herein,

and assessing and fixing the tax due from decedent's estate, pursuant to chapter 483, laws of 1885, and the laws amending the same, and the Government of the United States, one of the legatees under the will of said decedent, being dissatisfied with said appraisement, assessment, or determination, having appealed from said order to the sur-
78 rogate, by a notice filed herein, February 27, 1893, and the said appeal having come on to be argued; after hearing Edward Mitchell, esq., U. S. attorney, and Charles D. Baker, esq., for said appellant, and Stephen P. Nash, esq., counsel for the executors, in favor of said appeal, and Benjamin F. Dos Passos and Edgar J. Levy, esqs., counsel for the comptroller of the county of New York, in opposition thereto:

Ordered and adjudged, that said order so appealed from be, and the same is, in all respects affirmed.

FRANK T. FITZGERALD, *Surrogate.*

79 42 *Opinion of the surrogate.*

Estate of GEORGE W. CULLUM:

The testator died on the 28th of February, 1892, leaving a will which was admitted to probate, containing, among other provisions, a bequest to the Government of the United States of $250,000, upon condition that it shall erect and maintain a memorial hall upon the public grounds at West Point, New York. The legacy was accepted by the United States by act of Congress. In the proceeding instituted for the purpose of fixing the transfer tax, the appraiser appointed filed his report, in which he adjusted the value of this
80 legacy and reported it as subject to taxation. An order was entered thereupon fixing the tax accordingly, from which the United States now appeals to the surrogate, alleging, as grounds of error, that the tax is upon property, that the property belongs to the United States, and that the State is without power to levy a tax thereupon. It is also claimed that the United States is not a body politic or corporate within the meaning of those terms, as used in the act relative to taxable transfers of property, and that if it be a body politic and corporate within the meaning of the statute, the legacy is exempt from taxation by the express terms of the act. There can be no doubt that the tax is upon the right of succession and not upon
81 property (Est. of Swift, 137 N. Y., 77). The distinction between a tax upon property and a tax upon the right of succession is apparent from the decision in Wallace vs. Meyers (38 Fed. Rep., 184). It was held there that while the State cannot tax United States bonds within its jurisdiction, it could, nevertheless, impose a tax upon the transmission of such property by will or intestacy. In the same manner, the benefit, after it has become the property of the United States, will not be subject to taxation by the State government; but in its transit it may be taxed. Much of the confusion which seems to have
82 43 arisen in the mind of counsel in contending that the tax in question is upon property and not upon the right of succession may be avoided by regarding the legislation not as a tax but rather as a limitation or restriction upon the power of testamentary dispo-

sition. The United States obtains the legacy in question by virtue of a will made in pursuance of and depending for its validity upon the laws of the State of New York, an independent sovereignty within its proper sphere, and the United States Government is as much bound by those laws as any foreign state or nation would be under the same circumstances. The State would have the right to include the United States within that class of corporations for 83
whose benefit a devise or bequest may not be made under certain circumstances, exceeding a specified percentage of its value, or it would have an undoubted right to declare by proper legislation that the United States could take no benefit whatever by will (United States vs. Fox, 94 U., 315). In that case Charles Fox, of the State of New York, died vested of certain personal and real property situated within the State. By his last will and testament he devised and bequeathed the whole property, after the payment of his debts, to the Government of the United States, for the purpose of assisting to discharge the debt created by the war of the rebellion. Upon the petition of the district attorney of the United States, the will was 84
presented for probate before the surrogate of the city and county of New York. The infant heirs of the deceased contested the will. The surrogate decreed that the will was inoperative and void as a devise of real estate; that the United States could not lawfully take and hold real estate as a devisee under a will in trust or otherwise, and that it descended to the heirs-at-law. He at the same time decided that the will was valid and operative as to the personal estate of testator, and that the United States was the sole
44 legatee, and accordingly admitted the will to probate as a 85
will of personal estate only. This decree was affirmed by the general term and the court of appeals. It was carried to the United States Supreme Court, which in turn affirmed the decision of the State tribunals. In The State of New York vs. Miln (11 Peters, 139), the court said: "A state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That by virtue of this, it is not only the right, but the bounden and solemn duty of a State to advance the safety, happiness, and prosperity of its people and to provide for its general welfare by any and 86
every act of legislation which it may deem to be conducive to these ends, where the power over the particular subject or the manner of its exercise is not surrendered or restrained in the manner just stated." (See also Moore vs. Moore, 47 N. Y., 467; Matter of Fox, 52 N. Y., 534.) The legislation taxing legacies is not directed against the United States or against the legatees or devisees who receive the benefit. It operates against the person making the will, because it limits his power of testamentary disposition, and it is well settled that it is exclusively within the jurisdiction of the State to legislate upon and regulate the general rights, duties, and liabilities of its citizens. In Van Brocklin vs. State of Tennessee (117 U. S., 87
154) it was stated that the Constitution of the United States recognizes the control of the State over the acquisition of property by

the United States, and the exclusive right of legislation over all places purchased by the consent of the legislature of the State, and recognizes the right of the State to impose such terms upon the acquisition of such property and as a condition to its acquisition which the State chooses to impose. It is likewise free from doubt that the United States is a body politic and corporate (United States
88 45 vs. Maurice, 2 Brock, 96, 109; Van Brocklin vs. State of Tennessee, supra). But it is contended by the United States district attorney that if the United States is a body politic and corporate, the legacy is expressly exempted from taxation by chapter 553, laws of New York, 1890. The court of appeals of this State has recently held in the Estate of Prime (136 N. Y., 347), "That chapter 553 of the laws of 1890, which exempts the religious, charitable, and other corporations named therein from general taxation on personal property and from the collateral inheritance act, applies only to domestic corporations." The United States is not a cor-
89 poration organized or existing under or by virtue of the statutes of New York State. I therefore conclude that the legacy to the United States is liable to taxation. The order appealed from is
90 affirmed.

91 46 Surrogate's court, county of New York. In the matter of the appraisement of certain legacies and the assessment of a collateral inheritance tax thereon, under the last will and
92 testament of George W. Cullum, deceased.

SIRS: Please take notice that the Government of the United States hereby appeals to the general term of the supreme court in and for the first judicial department of the State of New York from the order of the surrogate of the county of New York, made on the 30th day of September, 1893, and entered in the office of the surrogate of said county, in the above-entitled proceeding, on the 4th day of October, 1893, assessing a tax upon the legacies
93 bequeathed by the last will and testament of George W. Cullum, deceased, and particularly from so much of said order as assesses a tax upon the legacy bequeathed to the Government of the United States by the said last will and testament of George W. Cullum, deceased, or adjudges the said legacy or any estate bequeathed to said Government of the United States by said last will and testament, and the increase thereof, as liable to the collateral inheritance tax.

Dated, New York City, N. Y., October 10, 1893.

EDWARD MITCHELL,
U. S. Attorney, Atty. for Appellant.

94 47 To Hon. FRANK T. FITZGERALD,
Surrogate New York County.

BENJ. F. DOS PASSOS,
Attorney for T. W. Myers, Comptroller of New York Co.

(Endorsed:) Due service of a copy of the within is hereby admitted.

New York, Oct. 10, 1893.

BENJ. F. DOS PASSOS, 95
Attorney for Theodore W. Myers. 96

48 Surrogate's court, county of New York. In the matter of 97
the estate of George W. Cullum, deceased.

SIRS: Please take notice that James B. Fry, William G. Hamilton, and George L. Gillespie, executors of the last will and testament of 98
George W. Cullum, deceased, hereby appeal to the general term of the supreme court of the state of New York, for the first judicial department, from the order of the surrogate's court entered in the above-entitled matter, dated September 30th, 1893, and filed in the office of the surrogate of the county of New York, on the 4th day of October, 1893, and from each and every part thereof, affirming the order made and entered herein on the 17th day of February, 1893, confirming the report of the appraiser and assessing and fixing the tax due from decedent's estate, and especially from so much of said order as assesses the tax upon the legacy bequeathed to the Government 99
of the United States, by the said last will and testament of George W. Cullum, deceased.

Dated, New York, November 2nd, 1893.

Yours, &c., S. P. & J. McL. NASH,
Attorneys for Executors.

49 To Hon. FRANK T. FITZGERALD, *Surrogate.* 100
JAMES F. MCLAUGHLIN,
Clerk of the Surrogate's Court of the County of New York.
Hon. THEODORE W. MYERS,
Comptroller of the City of New York.
Messrs. DOS PASSOS BROTHERS, 101
Attorneys for Theodore W. Myers, Comptroller of the 102
City of New York.

50 APPENDIX A.—*Extracts from will.* 103

Thirty-third. I give and bequeath to the Government of the United States the sum of two hundred and fifty thousand dollars, upon the following terms and conditions, viz: That during the life of Major-General James B. Fry and Peter S. Michie, hereinafter named, and at farthest, within five years after my death, it will authorize to be built, and will build and maintain upon the public grounds at West Point, New York, a fireproof stone memorial hall, under the directions of the Superintendent of the Military Academy, three other members of the Academic Board thereof, and my mili- 104
tary executor, Major-General James B. Fry, or, he not surviving at the time, another member of the Academic Board, all of whom I desire should be graduates of the Military Academy. This memorial hall I wish to be a receptacle of statues, busts, mural tablets, and portraits of distinguished deceased officers and graduates of the

Military Academy, of paintings of battle scenes, trophies of war, and such other objects as may tend to give elevation to the military profession; and, to prevent the introduction of unworthy subjects into this hall, I desire that the selection of each shall be made by not less than two-thirds of the members of the entire Academic Board, the vote being taken by ayes and nays to be so recorded. It is also my desire that this hall should be adapted for use on any ceremonial occasion taking place at West Point, N. Y., and for the assemblage and dinners of the Association of Graduates of the United States Military Academy; and, if practicable, I wish that lodging accommodations should be provided in some part of it for the members of that Association while attending its annual reunions.

51 Thirty-fifth. I give and bequeath to the Superintendent of the United States military academy and the professors of natural and experimental philosophy, of engineering, of mathematics and of chemistry, mineralogy and geology of that institution, and the successors of the persons who may hold those positions, the sum of twenty thousand dollars, in trust, on the following terms and conditions, viz: That they will invest the same and keep it invested, and apply the income to procuring statues, busts, mural tablets, and painted portraits of distinguished deceased officers and graduates of the United States Military Academy, and place the same in the memorial hall contemplated in article thirty-third of this will. It is my wish that any losses of this permanent fund of twenty thousand dollars should be made good by the accumulation of the income of the remainder before any further expenditures shall be made. I further desire that the selection of these memorials of distinguished deceased officers and graduates of the United States Military Academy should be made by aye and nay votes, as contemplated in article thirty-three of this will.

52 APPENDIX B.—*Act of acceptance by the United States.*

Chap. 237. An act to accept a bequest made by General George W. Cullum, for the erection of a memorial hall at West Point, New York, and to carry the terms and conditions of the same into execution.

Whereas George W. Cullum, colonel of the Corps of Engineers on the retired list, brevet major-general United States Army, a resident of the city of New York, lately deceased, did, by his last will and testament, give and bequeath to the United States the sum of two hundred and fifty thousand dollars, upon the terms and conditions that the United States shall build and maintain, in accordance with certain stipulations, upon the public grounds at West Point, New York, a fireproof memorial hall, for certain designated purposes hereinafter specified: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said bequest be, and the same hereby is, accepted by the United States, under the terms and conditions thereto annexed by the said testator in his said last will and testament, the said sum of two hundred and

fifty thousand dollars, to be paid into the Treasury of the United 111
States, subject to the disposition hereinafter to be made of the same, and for the faithful execution of the objects and purposes of said bequest, according to the will of the donor.

Sec. 2. That the Superintendent of the United States Military Academy, three other members of the Academic Board, and Major-General James B. Fry, during his lifetime, be, and they are, constituted a Board, by the name of "The Board of Trustees of the Memorial Hall of the United States Millitary Academy,"
53 whose duty it shall be to erect the said memorial hall, accord- 112
ing to the provisions of the will of the testator, and on completion thereof to transfer the same to the United States for perpetual use as a memorial hall, to be devoted to the objects and purposes as defined in the said will. And the members of the said Board of Trustees, to be selected as aforesaid, shall be appointed, immediately upon the passage of this act, by the Secretary of War, from members of the Academic Board of the said Academy who are graduates thereof. And in the event of any vacancy occurring in the said Board of Trustees, either by the death or inability to serve of Major-General James B. Fry, or by the death or vacation of office 113
of any member thereof who was appointed by selection from the members of the said Academic Board, the Secretary of War shall in each case, and from time to time as often as vacancies occur, fill such vacancies by the appointment of a member of the said Academic Board, who shall be a graduate of the said Military Academy, in the same manner as provided for the original appointments.

Sec. 3. That when the said sum of two hundred and fifty thousand dollars shall have been paid into the Treasury of the United States the whole sum shall be, and hereby is, appropriated for the erection of a suitable structure for the purposes of a memorial hall 114
at West Noint, New York, upon such site at West Point, New York, as the Board of Trustees herein created shall recommend and the Secretary of War approve.

Sec. 4. That the said Board of Trustees shall, as soon as practicable after the funds appropriated for building purposes in the preceding section shall have become available, determine, by a majority of the whole number of its members, upon a plan and specifications for a building to be erected corresponding to and in accordance with the terms and conditions of the aforesaid bequest, and sub-
54 mit the same to the Secretary of War for his approval, who 115
on behalf of the United States shall then cause a contract to be let, in the same manner as other contracts to which the United States is a party, for the erection of said building, under the direction of the said Board of Trustees.

Sec. 5. That the funds appropriated in this act shall be drawn from the Treasury, as required by section thirty-six hundred and seventy-three, Revised Statutes of the United States, in the case of moneys appropriated for the use of the War Department. And the said Board of Trustees shall submit to the Secretary of War estimates for his approval, which shall form the basis of his requisition. 116
The funds so drawn shall be disbursed, under the direction of the

Secretary of War, by the disbursing officer of the United States Military Academy, upon vouchers certified to by the president and secretary of the said Board of Trustees for and in behalf of said Board, and shall be accounted for by the said disbursing officer in the same manner and under the same conditions as other public funds of the United States: Provided, That the authority of the Secretary of War, for any expenditure under the provisions of this act, shall be conclusive evidence of the legality thereof.

117 SEC. 6. That the memorial hall to be erected under the provisions of this act shall be a receptacle of statues, busts, mural tablets, and portraits of distinguished and deceased officers and graduates of the Military Academy, of paintings of battle scenes, trophies of war, and such other objects as may tend to give elevation to the military profession; and to prevent the introduction of unworthy subjects into this hall, the selection of each shall be made by not less than two-thirds of the members of the entire Academic Board of the United States Military Academy, the votes being taken by ayes and nays, and to be so recorded.

118 55 SEC. 7. That the said Board of Trustees shall, within thirty days after the passage of this act, meet at West Point, New York, and organize by the election of one of their number as president and another as secretary of said Board; and a majority of the whole number shall constitute a quorum for the transaction of business. And the said memorial hall shall be erected under the direction of the said Board of Trustees; and, after being erected, shall be maintained, managed, and controlled by the United States in a manner similar to other public buildings at West Point. After the construction of the building and its transfer to the Government the func-

119 tions of the said Board of Trustees shall cease.

120 Approved, July 23, 1892.

56 STATE OF NEW YORK,

121 *City and County of New York, ss:*

I, J. Fairfax McLaughlin, clerk of the surrogate's court of said city and county, do hereby certify that I have compared the foregoing copies of the notice of appeal, papers, and order, of George W. Cullum, deceased, with the originals thereof in this office, and have found the same are true and correct copies of such originals, and the same are all the papers upon which said order was made.

In testimony whereof I have hereunto set my hand and affixed

122 the seal of the surrogate's court of the city and county of New York this sixth day of December, in the year of our Lord one thousand eight hundred and ninety-three.

[SEAL.] J. FAIRFAX MCLAUGHLIN,

123 *Clerk of the Surrogate's Court.*

57 At a general term of the Supreme Court in and for the first department held at the new county court-house in the city of New York, on the 16th day of February, 1894.

Present: Hon. Charles H. Van Brunt, P. J.; Hon. Morgan J. O'Brien, J.; Hon. David F. Follett, J.

In the matter of the estate of George W. Cullum, deceased.

The appeal of the United States and of the executors of George W. Cullum, deceased, from the order entered herein on the 30th day of September, 1893, in the office of the clerk of the surrogate's court of the city and county of New York, affirming an order entered herein on the 17th day of February, 1893, confirming the report of the appraiser appointed herein, and assessing and fixing the collateral inheritance tax due from decedent's estate, pursuant to chapter 483, laws of 1885, and the laws amendatory thereof, having come on to be heard, after hearing Edward Mitchell, esq., United States attorney, and Charles D. Baker, esq., for the United States, appellant, and Stephen P. Nash, esq., counsel for the executors of decedent, appellants, and Benjamin F. Dos
58 Passos, esq., counsel for the comptroller of the city and county of New York, respondent, it is

Ordered and adjudged, that the said order appealed from be, and the same is, in all respects affirmed with costs.

Ent., C. V. B.

59 (Indorsed:) N. Y. supreme court. In the matter of the estate of George W. Cullum, deceased. Order of affirmance and notice of entry. Dos Passos Brothers, attorneys for respondent, 15 Broad st., New York, Mills Building. To H. C. Platt, esq., attorney for U. S., appellant.

60 Supreme Court. In the matter of the estate of General George W. Cullum.

CITY AND COUNTY OF NEW YORK, *ss:*

Charles D. Baker, being duly sworn, says that he is an assistant United States attorney for the southern district of New York; that he has had entire charge of the above-entitled proceeding on behalf of the United States; that no written decision or opinion stating the reasons of the general term of the Supreme Court for its judgment has been filed herein, as deponent is informed and believes.

CHARLES D. BAKER.

Subscribed and sworn to before me this the 7th day of March, 1894.

GILBERT E. ROGERS,
Notary Public, Kings and N. Y. Counties.

61 N. Y. supreme court. General term. First department. In the matter of the estate of George W. Cullum, deceased.

Please take notice that the United States hereby appeals to the court of appeals from the order of the general term of the supreme court of the first department entered and filed herein on the 23rd day of February, 1894, which said order affirmed an order of the surrogate of the city and county of New York entered herein on the 30th day of September, 1893, which order affirmed an order entered herein on the 17th day of February, 1893, confirming the report of the appraiser appointed herein, and assessing a tax on a legacy to the Government of the United

States, by the last will and testament of said George W. Cullum, deceased, pursuant to chapter 483 of the laws of New York of 1885, and the laws amendatory thereof.

Dated New York, February 27, 1894.

Very respectfully,

HENRY C. PLATT,
U. S. Attorney for the Southern District of New York;
Attorney for the Appellants.

To BENJAMIN F. DOS PASSOS,
Atty. for Comptroller of City and County of New York, and
HENRY D. PURROY,
Clerk of the City and County of New York.

62 (Indorsed:) N. Y. supreme court. General term. First department. In the matter of the estate of George W. Cullum. Notice of appeal. Henry C. Platt, United States attorney, attorney for appellants. Henry D. Purroy, clerk of the city and county of New York. Filed Feb. 27, 1894.

63 It is hereby stipulated, that the appeal herein to the court of appeals may be heard in the foregoing printed record, and that all papers included therein are true copies of the originals thereof, and that certification of said copies, pursuant to section 1315 of the Code of Civil Procedure is hereby waived.

Dated New York, March 2nd, 1894.

HENRY C. PLATT,
United States Attorney for the Southern District of New York,
Attorney for Appellant.

BENJ. F. DOS PASSOS,
Attorney for the Comptroller of the City and County of New York,
Respondent.

64 At a special term of the supreme court, held at chambers thereof, in the county court-house in the city of New York on the 1st day of March, 1895.

Present, Hon. George P. Andrews, justice.

In the matter of the estate of George W. Cullum, deceased.

The United States, appellant, having appealed to the court of appeals from the order of the general term of the supreme court of the first department, entered and filed in the office of the clerk of the city and county of New York, on the 23rd day of February, 1894, which said order affirmed an order of the surrogate of the city and county of New York, entered on the 20th day of September, 1893, affirming an order entered herein on the 17th day of February, 1893, confirming the report of the appraiser appointed herein, and assessing a tax on a legacy to the Government of the United States under the last will and testament of George W. Cullum, deceased, pursuant to chapter 483 of the laws of 1885, and the laws amendatory thereof, and the said court of appeals having duly affirmed the said order of said general term.

65 Now, on reading and filing the remittitur from the said court of appeals, and on motion of Benjamin F. Dos Passos, attorney for the respondent, the comptroller of the city and county of New York, and after due deliberation, it is

Ordered, that the judgment of the court of appeals be, and the same is hereby, made the judgment of this court, and that the said respondent have judgment and execution for his costs, to be taxed by the clerk of this court.

Enter. G. P. A.

66 (Indorsed:) N. Y., N. Y. supreme court. In the matter of the estate of George W. Cullum, deceased; order on filing of remittitur. Benj. F. Dos Passos, attorney for respondent, 15 Broad st., New York, Mills Building.

67 (Fol. 1) New York supreme court. In the matter of the estate of George W. Cullum, deceased. Judgment March 4th, 1895.

The United States of America, appellant, having appealed to (Fol. 2) the court of appeals from the order of the general term of the supreme court of the first department, entered and filed in the office of the clerk of the city and county of New York on the 23rd day of February, 1894, which said order affirmed an order of the surrogate of the city and county of New York, entered on the 30th day of September, 1893, affirming an order entered herein on the 17th day of February, 1893, confirming the report of the appraiser appointed herein, and assessing a tax on a legacy to the Government of the United States under the last will and testament of said George W. Cullum, deceased, pursuant to chapter 483 of the laws of New York of 1885, and (Fol. 3) the laws amendatory thereof, and it appearing that pending this proceeding the term of Theodore W. Myers, as comptroller of the city and county of New York had expired by limitation, and that Ashbel P. Fitch had been duly elected and qualified as such comptroller on or about the 1st day of January, 1894, and had thereby become a party to this proceeding in the place and stead of the said Theodore W.

68 Myers, and the said court of appeals having duly affirmed the said order of said general term, and the remittitur having been filed on the 1st day of March, 1895, and an order having been duly entered thereon making the judgment of the said court of appeals the judgment of this court, and ordering that the respondent have judgment for his costs, and the costs of the respondent having been duly taxed at the sum of $100.85/100.

Now, on motion of Benjamin F. Dos Passos, attorney for the respondent, it is

(Fol. 4) Ordered and adjudged that the order aforesaid entered herein on the 23rd day of February, 1894, be, and the same hereby is, in all respects affirmed, and

It is further ordered and adjudged that the respondent, Ashbel P. Fitch, the comptroller of the city and county of New York, have and

recover judgment against the appellant, The United States of America, for the sum of one hundred 85/100 dollars costs, and that he have execution therefor.

[SEAL.] HENRY D. PURROY, *Clerk.*

69 (Fol. 1) At a special term of the supreme court held in and for the county of New York at the county court-house, in the city and county of New York, on the 14th day of August, 1895.

Present: Hon. Morgan J. O'Brien, justice.

In the matter of the estate of George W. Cullum, deceased.

(Fol. 2) On reading and filing the consent dated August 14th, 1895, hereto annexed, and upon motion of Wallace Macfarlane, attorney for the plaintiffs,

It is ordered and adjudged that the judgment entered herein on the 4th day of March, 1895, be, and the same hereby is, amended nunc pro tunc by inserting the words "of America" after the word "United States" and before the word "appellant," in the first folio thereof; and by the insertion of the words "and it appearing (Fol. 3) that pending this proceeding the term of Theodore W. Myers as comptroller of the city and county of New York had expired by limitation, and that Ashbel P. Fitch had been duly elected and qualified as such comptroller on or about the 1st day of January, 1894, and had thereby become a party to this proceeding in the place and stead 70 (Fol. 4) of the said Theodore W. Myers" after the word "thereof" and before the word "and" in the second folio thereof; and by the insertion of the words "ordered and adjudged that the order aforesaid, entered herein on the 23rd day of February, 1894, be, and the same hereby is, in all respects affirmed" after the words "it is" at the end of the third folio thereof; and by the insertion of the words "it is further" before the word "ordered" in the fourth folio thereof; and by the insertion of the words "Ashbel P. Fitch" between the word "respondent" and the word "the" in said fourth folio; and by the insertion (Fol. 5) of the words "of America" between the word "States" and the word "for" in said fourth folio.

And it is further ordered that the clerk of this court correct the judgment record in this proceeding to conform herewith and attach this order to the judgment roll filed herein so modified.

Enter. M. J. O'B., *J. S. C.*

M. J. O'B.

71 Fol. 1 New York supreme court, New York County. In the matter of the estate of George W. Cullum, deceased.

We hereby consent to the entry of an order in the above-entitled proceeding amending the judgment entered herein on the 4th day of March, 1895, nunc pro tunc, by the insertion of the words "of America" (Fol. 2) after the word "United States" and before the word "appellant" in the first folio thereof; and by the insertion of the words "and it appearing that pending this proceeding the term of Theodore W. Myers as comptroller of the city and county of New York had expired

by limitation, and that Ashbel P. Fitch had been duly elected and qualified as such comptroller on or about the 1st day of January, 1894, and had thereby become a party to this proceeding in the place and
(Fol. 3) stead of the said Theodore W. Myers" after the word "thereof" and before the word "and" in the second folio thereof; and by the insertion of the words "ordered and adjudged that the order aforesaid, entered herein on the 23rd day of February, 1894, be, and the same hereby is, in all respects affirmed" after the words "it is" at the
72 end of the third folio thereof; and by the insertion of the words "it is further" before the word "ordered" in the fourth folio
(Fol. 4) thereof; and by the insertion of the words "Ashbel P. Fitch" between the word "respondent" and the word "the" in said fourth folio; and by the insertion of the words "of America" between the word "States" and the word "for" in said fourth folio.

Dated New York, August 14th, 1895.

WALLACE MACFARLANE,
U. S. Attorney & Attorney for Appellant.

BENJ. F. DOS PASSOS,
Atty. for Comptroller, Respondent.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry D. Purroy, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original record, on removal to U. S. court, in the matter of the estate of George W. Cullum, deceased, on file in my office, and that the same is a correct transcript therefrom and the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 15th day of August, 1895.

[SEAL.] HENRY D. PURROY, *Clerk.*

73 UNITED STATES OF AMERICA, *ss:*

To Ashbel P. Fitch comptroller of the city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York wherein The United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this ninth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

74 Due and timely service of the within citation, by service of a true copy thereof, is hereby admitted, this 17th day of December, 1895.

New York, December 17th, 1895.

BENJ. F. DOS PASSOS,
Atty. and Counsel for Ashbel P. Fitch,
Comptroller of the City and County of New York, Deft. in Error.

S. P. & J. McL. NASH,
Attys. and Counsel for James B. Fry,
William G. Hamilton, and George L. Gillespie,
Executors of George W. Cullum, Deceased, Defts. in Error.

[SEAL.] HENRY D. PURROY, *Cl'k.*

(Indorsement on cover:) Case No. 16118. New York supreme court. Term No., 828. The United States, plaintiff in error, *vs.* Ashbel P. Fitch, comptroller of the city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased. Filed December 20th, 1895.

Office Supreme Court U. S.
FILED.
APR 24 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES OF AMERICA AND Clifford B. Ackerly, executor of William W. Merriam, deceased, plaintiffs in error, *v.* J. HENRY PERKINS, TREASURER OF SUFFOLK COUNTY, New York.	No. 422.
THE UNITED STATES, PLAINTIFF IN error, *v.* ASHBEL P. FITCH, COMPTROLLER OF THE city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased.	No. 828.

MOTION TO ADVANCE.

74 Due and timely service of the within citation, by service of a true copy thereof, is hereby admitted, this 17th day of December, 1895.

New York, December 17th, 1895.

BENJ. F. DOS PASSOS,
Atty. and Counsel for Ashbel P. Fitch,
Comptroller of the City and County of New York, Defl. in Error.

S. P. & J. McL. NASH,
Attys. and Counsel for James B. Fry,
William G. Hamilton, and George L. Gillespie,
Executors of George W. Cullum, Deceased, Defts. in Error.

[SEAL.] HENRY D. PURROY, *Clk.*

(Indorsement on cover:) Case No. 16148. New York supreme court. Term No., 828. The United States, plaintiff in error, *vs.* Ashbel P. Fitch, comptroller of the city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased. Filed December 20th, 1895.

Office Supreme Court U. S.
FILED.
APR 24 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES OF AMERICA AND Clifford B. Ackerly, executor of William W. Merriam, deceased, plaintiffs in error,
v.
J. HENRY PERKINS, TREASURER OF SUFFOLK COUNTY, New York.
No. 422.

THE UNITED STATES, PLAINTIFF IN error,
v.
ASHBEL P. FITCH, COMPTROLLER OF THE city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased.
No. 828.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES OF AMERICA AND Clifford B. Ackerly, executor of William W. Merriam, deceased, plaintiffs in error, *v.* J. HENRY PERKINS, TREASURER OF SUFFOLK COUNTY, NEW YORK.	No. 422.
THE UNITED STATES, PLAINTIFF IN error, *v.* ASHBEL P. FITCH, COMPTROLLER OF THE city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased.	No. 828.

MOTION TO ADVANCE.

These are writs of error to judgments of the supreme court of the State of New York, and involve the question whether the Government of the United States is subject to collateral inheritance tax, imposed by the State of New York.

In the first case, the Government is the sole legatee of the estate of Gen. William W. Merriam. In accordance with the provisions of the New York law, an appraiser was appointed by the surrogate, who duly reported the cash value of the estate to be $79,284.60, and the amount of tax to which the Government was liable $3,964.23, which report was approved and confirmed, and, after hearing on appeal, affirmed. On appeal to the supreme court, the decision of the surrogate was affirmed. The United States appealed to the court of appeals, where the judgment of the supreme court was affirmed, and the case remitted to that court, which thereupon entered a judgment against the United States for the amount claimed. To review that judgment the present writ of error has been sued out.

In the second case, there was bequeathed to the Government of the United States $175,000, upon which there was assessed a tax of $8,755. Proceedings similar to the above were had, with the same result.

The Government and the counsel for the defendants in error desire that the cases should, if possible, be heard at this term, and stipulations have accordingly been entered into and filed agreeing to submit them on printed arguments (which have been filed), provided the court consents to take them at this term.

The Solicitor-General therefore respectfully moves the court to advance the cases on the docket, for submission on printed arguments on such day during the present term as may be convenient to the court.

HOLMES CONRAD,
Solicitor-General.

O

Office Supreme Court U. S.
FILED.
FEB 26 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES OF AMERICA and Clifford B. Ackerly, executor of William W. Merriam, deceased, plaintiffs in error, v. J. HENRY PERKINS, COUNTY TREASURER of Suffolk County, New York. — No. 422.

THE UNITED STATES, PLAINTIFF IN error, v. ASHBEL P. FITCH, COMPTROLLER OF the city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased. — No. 828.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR THE UNITED STATES.

In the first case, the Government is the sole legatee of the estate of Gen. William W. Merriam. In accordance with the provisions of the New York law, an appraiser was appointed by the surrogate, who duly reported the cash value of the estate to be $79,284.60, and the amount of tax to which the Government was liable $3,964.23, which report was approved and confirmed, and, after hearing on appeal, affirmed. On appeal to the supreme court, the decision of the surrogate was affirmed. The United States appealed to the court of appeals, where the judgment of the supreme court was affirmed, and the case remitted to that court, which thereupon entered a judgment against the United States for the amount claimed. To review that judgment the present writ of error has been sued out.

In the second case, there was bequeathed to the Government of the United States $175,000, upon which there was assessed a tax of $8,755. Proceedings similar to the above were had, with the same result.

The Government and the counsel for the defendants in error desire that the cases should, if possible, be heard at this term, and stipulations have accordingly been entered into and filed agreeing to submit them on printed arguments (which have been filed), provided the court consents to take them at this term.

The Solicitor-General therefore respectfully moves the court to advance the cases on the docket, for submission on printed arguments on such day during the present term as may be convenient to the court.

HOLMES CONRAD,
Solicitor-General.

○

Office Supreme Court U. S.
FILED.
FEB 26 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES OF AMERICA and Clifford B. Ackerly, executor of William W. Merriam, deceased, plaintiffs in error, *v.* J. HENRY PERKINS, COUNTY TREASURER of Suffolk County, New York.	No. 422.
THE UNITED STATES, PLAINTIFF IN error, *v.* ASHBEL P. FITCH, COMPTROLLER OF the city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased.	No. 828.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES OF AMERICA and Clifford B. Ackerly, executor of William W. Merriam, deceased, plaintiffs in error *v.* J. HENRY PERKINS, COUNTY TREASURER of Suffolk County, New York.	No. 422.
THE UNITED STATES, PLAINTIFF IN error, *v.* ASHBEL P. FITCH, COMPTROLLER OF the city and county of New York, and James B. Fry, William G. Hamilton, and George L. Gillespie, executors of George W. Cullum, deceased.	No. 828.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR THE UNITED STATES.

These are entirely distinct cases, differing as to names, dates, amounts, and places, but agreeing as to the single question of law which is brought here for review.

No. 422.

In this case William W. Merriam died on the 30th day of January, 1889, leaving a will which was admitted to probate by the surrogate of Suffolk County, N. Y., by which will he devised and bequeathed all his estate, real and personal, to the Government of the United States of America.

The market value of the personal estate was $94,051.15, which the surrogate determined was liable, after making the proper deductions, to a collateral inheritance tax of $3,964.23.

On appeal from the order of the surrogate's court of Suffolk County to the supreme court for the second judicial district, the order of the surrogate was affirmed. And on appeal to the court of appeals of the State of New York, the judgment of the supreme court was affirmed and the cause was remitted into the supreme court of the State of New York, where, on March 31, 1894, the judgment was finally entered with costs against the United States.

No. 828.

In this case George W. Cullum, a resident of the State of New York, died in the city of New York on the 28th of February, 1892, leaving a last will and testament, which, on the 30th day of April, 1892, was duly admitted to probate.

By this will the testator bequeathed to the United States Government the sum of $175,000, on which, by order of the surrogate's court, there was assessed a collateral inheritance tax of $8,755.

This order of the surrogate's court was affirmed by the supreme court and by the court of appeals of the State of New York.

The assignment of errors (p. 3 of this record) presents substantially the errors complained of in both cases, and for that reason they will both be considered here in one brief.

The opinion of Bartlett, J., in No. 422 (p. 16), and the opinion of the surrogate in No. 828 (p. 16), which appears to have been adopted by both the supreme court and the court of appeals of the State, present fully and clearly the grounds upon which the judgments in these cases, respectively, were rested. They disclose further, however, that these grounds not only differ from but conflict with each other.

In No. 422 (Merriam's estate) the court of appeals, through Bartlett, J. (p. 17), says:

> The United States being capable of taking this legacy, it remains to consider whether there is any reason why this tax should not be collected. This court has recently decided that this tax is not imposed on property, but on the right of succession under a will, or devolution in case of intestacy. (In the matter of the estate of James T. Swift, 137 N. Y., 77; 50 St. R., 81.)
>
> This tax, in effect, limits the power of testamentary disposition, and legatees and devisees take their bequests and devises subject to this tax imposed upon the succession of property. This view eliminates from the case the point urged by the appellant that to collect this tax would be in violation of the well-established rule that the State can not tax the prop-

> erty of the United States. Assuming this legacy invested on the United States at the moment of testator's death, yet, in contemplation of the law, the tax was fixed on the succession at the same instant of time. This is not a tax imposed by the State on property of the United States. The property that vests in the United States under this will is the net amount of its legacy after the succession tax is paid.
> * * *

In No. 828 (Cullum's estate, Rec., 17), the surrogate, whose opinion appears to have been adopted by both the supreme court and the court of appeals, said:

> The legislation taxing legacies is not directed against the United States or against the legatees or devisees who receive the benefit. It operates against the person making the will, because it limits his power of testamentary disposition; and it is well settled that it is exclusively within the jurisdiction of the State to legislate upon and regulate the general rights, duties, and liabilities of its citizens. In *Van Brocklin* v. *The State of Tennessee* (117 U. S., 154) it was stated that the Constitution of the United States recognizes the control of the State over the acquisition of property by the United States and the exclusive right of legislation over all places purchased by the consent of the legislature of the State, and recognizes the right of the State to impose such terms upon the acquisition of such property and as a condition to its acquisition which the State chooses to impose.

It will be observed that in the opinion delivered by Judge Bartlett it is said that "legatees and devisees take their bequests and devises, subject to this tax *imposed upon the succession of property;*" while in the opin-

ion delivered by the surrogate, it is said, "It operates against the person making the will, because it limits his power of testamentary disposition."

ARGUMENT.

The statute under which this tax is sought to be imposed here is chapter 483 of the Laws of 1885, as amended by chapter 215 of the Laws of 1891, as follows:

> SEC. 1. After the passage of this act, all property which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State; or if the decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State; or any interest therein or income therefrom, which shall be transferred by deed, grant, sale, or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy to any property or the income thereof, other than to or for societies, corporations, and institutions now exempted by law from taxation, or from collateral inheritance tax, shall be and is subject to a tax at the rate hereinafter specified, to be paid to the treasurer of the proper county, and in the county of New York to the comptroller thereof, for the use of the State; and all heirs, legatees, devisees, administrators, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

The "collateral inheritance tax" created by this statute and sought to be imposed in these cases is defined by Mr. Dos Passos in his learned work on Inheritance Tax Law, second edition, section 2—

> To be a burden imposed by government upon all gifts, legacies, inheritances, and successions, whether of real or personal property, or both, or any interest therein, passing to certain persons (other than those specially excepted) by will, by intestate laws, or by any deed or instrument made *inter vivos*, intended to take effect at or after the death of the grantor.

In section 8, however, the learned author elaborates this definition and says:

> It is now an established doctrine that, so far as the nature of the tax is concerned, such taxes are nothing more than a burden, bonus, excise, or assessment, as they have been variously defined, imposed by government upon the passing, devolution, transmission, or *privilege of taking or receiving property* under wills and intestate laws, whether such property passes to collateral or lineal heirs. * * * The right to impose these taxes is based upon the broad constitutional power of the State as a sovereign to modify, amend, extend, or wholly to repeal the laws governing the transmission of property by will and intestate laws. Such laws confer at the utmost *a mere privilege upon the heirs or other representatives of the decedent of succeeding to the estate*, and the legislature has the constitutional power to tax the privilege conferred, as it has the right to tax any other privilege within its jurisdiction.

The collateral inheritance tax must of necessity be a tax imposed either on the *testator*, for the privilege

enjoyed by him of disposing of his estate by will, or upon the *legatee* for the privilege enjoyed by him of taking the legacy under the will, or upon the *property* bequeathed by the will, or upon the *estate* of the decedent in the hands of his personal representatives.

(1) THE JUDGMENT OF THE COURT IN NO. 828, CULLUM'S ESTATE, PROCEEDS UPON THE GROUND THAT THE TAX "OPERATES AGAINST THE PERSON MAKING THE WILL, BECAUSE IT LIMITS HIS POWER OF TESTAMENTARY DISPOSITION."

But this is not only in conflict with the view uniformly taken by courts and text writers, but directly conflicts with the view of Mr. Dos Passos, counsel for the defendant in error here, in his work on collateral inheritance tax, already cited, in which he says: "Such laws confer at the utmost a mere privilege upon the heirs or other representatives of the decedent of succeeding to the estate." And this view appears to be in accordance with reason, because precisely the same result follows under the statute whether the decedent makes a testamentary disposition of his estate or die intestate, whether his estate pass under the statute of wills or under a statute of descents and distribution.

(2) IT IS NOT A TAX ON THE ESTATE OF THE TESTATOR.

Mr. Dos Passos, in his work referred to, section 64, says:

> Except where some personal or fixed liability is incurred by the executor, administrator, or trustee, pursuant to the statute, in refusing or neglecting

to pay the tax when due and payable, it is payable primarily out of the taxable interest by the persons taking the property, or who are beneficially interested therein, *and not out of the general estate.*

(3) IT IS NOT A TAX UPON THE PROPERTY BEQUEATHED.

Estate of Swift, 137 N. Y., 77;
Wallace v. *Myers*, 38 Fed. R., 184;
Eyre v. *Jacob*, 14 Grat. (Va.), 427;
Schoolfield's Exr. v. *City of Lynchburg*, 78 Va., 366;
Strode v. *Commonwealth*, 52 Penn., 181;
Scholey v. *Rew*, 23 Wall., 347.

In *State* v. *Dalrymple* (70 Md., 294), McSherry, J., delivering the opinion of the court, said:

> The act plainly intended to require that a person taking the benefit of a civil right secured to him under our law should pay a certain premium for its enjoyment. * * * This, therefore, is not a tax upon the property, but is merely the price exacted by the State for the privilege accorded in permitting property so situated to be transmitted by will, or by descent, or by distribution.

In *Wallace et al.* v. *Myers* (38 Fed. Rep., 184), which was a suit to restrain the collection of a collateral inheritance tax on United States bonds, it was held that the tax was not imposed on the bonds, but on the privilege of acquiring property by inheritance.

In *Eyre* v. *Jacob* (14 Grat., 429), Judge Lee, in delivering an interesting and very instructive opinion, much relied on by Mr. Dos Passos in his learned work, but speaking, however, but for a bare majority of the court, said:

> The intention of the legislature was plainly to tax the transmission of property by devise or descent to

collateral kindred; to require that a *party thus taking the benefit* of a civil right, secured to him under the law, should pay a certain premium for its enjoyment; and as it was thought just and reasonable that the amount of the premium should bear a certain proportion to the value of the subject enjoyed, it is fixed at a certain per centum upon the value of the whole estate transmitted * * * (p. 430).

The right to take *property by devise or descent* is the creature of the law and secured and protected by its authority. The legislature might, if it saw proper, restrict the succession to a decedent's estate, either by devise or descent, to a particular class of his kindred. It might impose terms and conditions upon which collateral relations may be permitted to take it; or, it may to-morrow, if it pleases, absolutely repeal the Statute of Wills and that of Descents and Distributions and declare that, upon the death of a party, his property shall be applied to the payment of his debt and the residue appropriated to public uses.

Possessing this sweeping power over the whole subject, it is difficult to see upon what ground its right to appropriate a modicum of the estate, call it a tax or what you will as the condition upon which those *who take the estate shall be permitted to enjoy it*, can be successfully questioned.

In the matter of *Hoffman* (143 N. Y., 327), Finch, J., delivering the opinion of the court, said:

In construing the opinion of the inheritance tax law as it stood prior to the act of 1892, we had occasion to decide that it imposed a tax upon the right of succession to the property, * * * and *not upon the property or estate of the decedent.*

(4) IT IS A TAX ON THE PRIVILEGE EXERCISED BY THE LEGATEE OF TAKING THE LEGACY UNDER THE WILL.

As defined by Mr. Dos Passos (*supra*), such laws confer at the utmost a mere privilege upon the heirs or other representatives of the decedent of succeeding to the estate.

The tax is frequently called a "succession tax." And in *Scholey* v. *Rew* (23 Wall., 347), this court, in speaking of the act of Congress then under consideration, said:

> Successor is employed in the act as the correlative to predecessor; and the succession or devolution of the real estate is the subject-matter of the tax or duty. Or, in other words, it is the right to become the successor of real estate upon the death of the predecessor, whether the devolution or disposition of the same is effected by will, deed, or laws of descent from a grantor, testator, ancestor, or other person from whom the interest of the successor has been or shall be derived.

It is said, too, to be a tax on the "privilege" of taking. In *Wallace* v. *Myers* (*supra*) the court said, "The bonds are the subject of appraisal, but the *privilege* is the subject of the tax." And Mr. Dos Passos, as already quoted, defines it in section 8 as a "burden imposed by government upon the passing, devolution, transmission, or *privilege of taking or receiving* property under wills and intestate laws."

The tax is not upon the property which is transferred, but upon the right of succession, which passes to the successor. (*Matter of Seaman*, 147 N. Y., 74.)

THE PRIVILEGE ENJOYED AND SECURED TO THE UNITED STATES OF ACQUIRING LEGACIES UNDER WILLS IN THE STATE OF NEW YORK CAN NOT BE SUBJECTED TO TAXATION BY THAT STATE.

The United States have the capacity to take and hold legacies and devises.

The Statute of Wills of the State of New York does not authorize, but prohibits, the devise of real property to the United States.

This statute does not prohibit, but does allow the bequest of legacies to the United States.

The collateral inheritance tax is not provided for or imposed by the Statute of Wills of the State of New York as a condition or limitation upon the right of the United States to take legacies under wills made in that State.

The right claimed and enforced by the State courts of subjecting to a collateral inheritance tax the privilege enjoyed by the United States of taking legacies under wills authorized by the Statute of Wills of the State of New York arises, if at all, only under and by virtue of a general statute of the State of New York for the assessment and collection of State revenue, entitled "An act to tax gifts, legacies, and collateral inheritances in certain cases."

In *United States* v. *Fox* (94 U. S., 321), this court said:

> Statutes of wills, as is justly observed by the court of appeals, are enabling acts; and prior to the statute of 32 Henry VIII there was no general power at common law to devise lands. The power

> was opposed to the feudal policy of holding lands alienable without the consent of the lord. The English Statute of Wills became a part of the law of New York upon the adoption of her constitution in 1777, and with some modifications in its language remains so at this day. Every person must therefore devise his lands in that State within the limitation of the statute, or he can not devise them at all. His power is bounded by its condition. That statute provides that a devise of lands may be made "to any person capable by law of holding real estate, but no devise to a corporation shall be valid unless such corporation be expressly authorized by its charter, or by statute, to take by devise."

The court accordingly held that "a devise to the United States of real property situated in that State is therefore void."

And in *Jones* v. *Habersham* (107 U. S., 179):

> According to the uniform course of the decisions of this court, the validity of these devises, as against the heirs at law, depends upon the law of the State in which the lands lie; and the validity of the bequest, as against the next of kin, upon the law of the State in which the testatrix had her domicile.

And therefore it is certainly true that if in the Statute of Wills of the State of New York the same provision could be found excluding the United States from taking *legacies*, which exists and was enforced in *United States* v. *Fox*, as to *devises*, no room would be left here for doubt or hesitation. But no such provision exists in that statute. Testators have unlimited capacity and authority to make bequests to the United States; and the United

States have equal authority and capacity to receive and hold such bequests.

If the United States claims under the Statute of Wills, it must take and hold according to the terms and conditions of that statute. (*Mager* v. *Grima*, 8 How., 490.)

The decisions of the State courts of New York complained of here have resulted from confounding two things which have no relation to each other, and from failing to distinguish between two statutes which relate to wholly distinct and different systems of law.

The right of the United States to acquire property under the Statute of Wills of the State of New York can not be restricted or curtailed by the operation of another statute for the assessment and collection of revenue to the State of New York.

These two statutes can not be construed together as though they were *in pari materia*.

They are not *in pari materia*, although they may incidentally refer to the same subject, i. e., bequests.

Where acts are not *in pari materia*—that is, where they do not form a united system and can not be regarded as such—it is fallacious to take the construction that has been put upon one as a guide for the construction of another. (Endlich on Interpretation of Statutes, sec. 54; Sutherland on Statutory Construction, sec. 286.)

Thus a statute to prevent live stock from running at large has been held not *in pari materia* with a statute defining the liabilities of railway companies for killing stock running at large on their roadway. (*Central R. R. Co.* v. *Hamilton*, 71 Ga., 465.)

It is certainly true, as stated by the court in *Wallace* v. *Myers* (38 Fed. Rep., 184), that—

> It is lawful for the legislature to annex any conditions to the privilege which may seem expedient and do not conflict with the organic law of the State or with the constitutional laws of the United States.

But this is very far from supporting the proposition for which counsel cited it in the court below, to wit: That the inheritance tax law of the State of New York could be construed as a "condition" upon the Statute of Wills.

The revenue acts of the State form one distinct system of law. The Statute of Wills forms another equally distinct system. All acts passed by the legislature within either of these systems may be construed *in pari materia*, so as to ascertain and effectuate the intent of the legislature, which will always be presumed to have in mind all of the laws under that system with which at the time it may be dealing.

But if, when legislating as to one system of law, incidental provision is made for a subject which may fall within another system, the acts relating to the different systems will not be construed *in pari materia*.

The payment of the collateral inheritance tax is not made a condition precedent or subsequent to the receiving of the legacy by any express provision of statute. The language of the statute is as follows:

> After the passage of this act all property which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State * * * shall be and is subject to a tax hereinafter specified, to be paid to the treasurer of the

> proper county, and in the county of New York, to the comptroller thereof for the use of the State. And all heirs, legatees, devisees, administrators, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

Such payment can not be engrafted into the Statute of Wills as a condition by implication from any language employed in the Revenue Statutes because these two statutes belong to diverse and essentially variant systems of law.

> A statute must be construed with reference to the whole system with which it forms a part. And statutes upon cognate subjects may be referred to, though not strictly *in pari materia*. (Sutherland on Statutory Construction, sec. 284.)

"It is necessary to the implication of a repeal that the *objects* of the two statutes are the same. If they are not, both statutes will stand though they refer to the same *subject*." (*United States* v. *Claflin*, 97 U. S., 546.)

THE UNITED STATES ARE NOT BOUND BY A STATUTE UNLESS THEY ARE EXPRESSLY NAMED THEREIN.

In Broom's Legal Maxims (8th ed., 73), commenting upon the maxim here invoked, it is said:

> The rule above stated seems, however, to apply only where the property or peculiar privileges of the Crown are affected; and this distinction is laid down, that where the King has any prerogative, estate, right, title, or interest, he shall not be barred of them by the general words of an act if he be not named therein.

In *United States* v. *Hoar* (2 Mason's Reports, 314) Mr. Justice Story said:

> But independently of any doctrine founded on the notion of prerogative, the same construction of statutes of this sort ought to prevail, founded upon the legislative intention. Where the Government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischiefs to be redressed or the language used that the Government itself was in contemplation of the legislature before a court of law would be authorized to put such an interpretation upon any statute. In general, acts of the legislature are meant to regulate and direct the acts and rights of citizens; and in most cases the reasoning applicable to them applies with different and often contrary force to the Government itself. It appears to me, therefore, to be a safe rule, founded in the principles of the common law, that the general words of a statute ought not to include the Government or affect its rights unless that construction be clear and indisputable upon the text of the act.

In *Jones* v. *United States* (1 Nott & Hunt., C. Cls. R., 389) will be found a very learned and instructive opinion of Judge Nott on the application of this maxim in English and American cases.

In *Savings Bank* v. *United States* (19 Wall., 239) Mr. Justice Strong said:

> It is a familiar principle that the King is not bound by any act of Parliament, unless he be named therein by special and particular words; the most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrain or

> diminish any of his rights and interests. He may even take the benefit of any particular act though not named.
>
> The rule thus settled respecting the British Crown is equally applicable to the Government, and it has been applied frequently in the different States and practically in the Federal courts.
>
> It may be considered as settled that so much of the royal prerogatives as belong to the King, in his capacity of *parens patriæ*, or universal trustee, enters as much into our political state as it does into the principles of the British constitution.
>
> (*United States* v. *Herron*, 20 Wall., 263.)

Here the legacies were left the United States in their soverign political character, to be used for the public welfare.

The revenue law of the State of New York was manifestly intended to apply only to such persons as usually and ordinarily fall within the operations of such a law.

> It is a general principle that the tax laws of a State refer to private and not to public property. The public is never subject to tax laws; and no portion of it can be without express statute. (Endlich on Interpretation of Statutes, secs. 163, 167.)

The courts of New York, in order to bring the United States within the operation of these revenue laws, have been compelled to declare that the United States are included in the language "to any person or persons or to a body politic or corporate" in Merriam's estate; and in Cullum's estate to hold that "the legislation taxing legacies is not directed against the United States or

against the legatees or devisees who received the benefit; it operates against the person making the will."

And Mr. Dos Passos, in his book (sec. 36, p. 118), said:

> So the United States Government is not exempted from taxation under the inheritance tax as a domestic corporation. *It is to be regarded as a foreign corporation*, and a tax imposed upon a legacy to it is not upon the property of the United States, but the privilege of succession accorded to it by the laws of the State.

It is true that the United States, in its *contract* relations, is always to be regarded as a body corporate and politic. (*Dugan* v. *United States*, 3 Wheat., 181; *United States* v. *Bradley*, 10 Pet., 343.)

Chief Justice Marshall, in *United States* v. *Maurice* (2 Brock., 109), has used the term in a sense which has been misunderstood and misapplied. In this case, which was an *action of debt*, he said:

> The United States is a government, and consequently a body politic and corporate, capable of attaining the objects for which it was created by means which are necessary for their attainment.

In no sense can the United States be regarded "as a foreign corporation" within its territorial jurisdiction.

In *Vaughn* v. *Northup et al.* (15 Pet., 6) this court say:

> The debts due from the Government of the United States have no locality at the seat of Government. The United States, in their sovereign capacity, have no particular place of domicile, but possess in contemplation of law an ubiquity throughout the Union.

The United States do not take gifts, grants, devises, or bequests in their corporate character. They take and hold them as *parens patriæ*, in their sovereign character.

A bequest to the United States for the purpose of assisting to discharge the debt contracted by the war for the suppression of the rebellion "is a good charitable gift." (*Russell* v. *Allen*, 107 U. S., 170–71.)

The ground upon which this court rested its judgment in *United States* v. *Fox* was, that the term "corporation" in the New York statute applies only to such corporations as are created under the laws of the State. "It was so held by the court of appeals in *White* v. *Howard* (46 N. Y., 165), and its construction of the statute is conclusive upon us." (94 U. S., 321.)

THE PROPERTY, INSTRUMENTS, AGENCIES, AND MEANS OF THE UNITED STATES SHOULD NOT BE AND CAN NOT BE SUBJECTED TO TAXATION BY A STATE.

Because "the power to tax is the power to destroy." In *Osborn* v. *The Bank of the United States* (9 Wheat., 867), Marshall, C. J., speaking for the court, said:

> Can a contractor for supplying a military post with provision be restrained from making purchases within any State or from transporting the provisions to the place at which the troops were stationed, or could he be fined or taxed for doing so? We have not heard these questions answered in the affirmative. It is true that the property of the contractor may be taxed, as the property of other citizens, and so may the local power of the bank. But we do not admit that the act of purchasing or of conveying the articles purchased can be under State control.

If the act of purchasing can not be taxed by a State can it tax the act of taking a legacy?

The act of taking a legacy is an act of purchase.

If the exercise by the United States of their privilege of taking property by bequest is subject to taxation, why may not the privilege of taking by grant, or under the right of eminent domain, or of holding property at all in the State, be in like manner taxed?

Why may not the exercise of any right, privilege, or power which the United States possesses be made the subject of State taxation?

The property and all the instrumentalities of government for the use and employment of its property and its rights and powers are exempt by the Constitution of the United States from taxation under the authority of the State. (*Van Brocklin et al.* v. *State of Tennessee*, 117 U. S., 151; *Pollock* v. *Farmers' Loan and Trust Co.*, 157 U. S., 584; Cooley on Taxn., 2d ed., 83.)

And a legacy to the United States is property. But the position taken by the State courts is, that although the legacy be property and the right of the United States thereto has accrued and their title vested, yet they may not exercise the right or enjoy the title except they pay tax or toll to the State of New York.

On the whole case, I submit—

1. That the United States had the right, power, and authority to take and receive legacies bequeathed to them by wills duly made under the Statute of Wills of the State of New York.

2. That this right is held and exercised by the United States in their sovereign and political character.

3. That this right became consummate in the United States to the legacies under the two wills here considered, upon the probate of the will and the qualification of the executor.

4. That the Statute of Wills of New York imposes no condition, restriction, or limitation upon the exercise by the United States of their right to take and receive these legacies.

5. That the collateral inheritance tax law of the State of New York is but part and parcel of the general system of revenue laws of that State, and that under it the payment of the collateral inheritance tax is not made a condition to the vesting or taking of the legacy.

6. That the Statute of Wills and the Revenue Statutes of New York constitute, respectively, essentially different systems of law, and can not, therefore, be construed together *in pari materia*.

7. That the collateral inheritance tax is a tax imposed upon the legatee or distributee for the exercise and enjoyment of the privilege derived by them under the Statute of Wills or the Statute of Descents.

8. That the right held and enjoyed by the United States to take and receive the legacies bequeathed to them is a privilege, or right of property, which, being public property of the United States, for public uses, is not liable to taxation by the State of New York.

HOLMES CONRAD,
Solicitor-General.

Supreme Court U.S.
FILED,
JAN 28 1896
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1895.

THE UNITED STATES,
Plaintiff in Error,
vs.
ASHBEL P. FITCH, Comptroller of the City and County of New York, and JAMES B. FRY and others, as Executors of the Estate of George W. Cullum, deceased.

No. 828.

Brief for Hon. Ashbel P. Fitch, Comptroller, &c., Defendant in Error.

BENJ. F. DOS PASSOS,
EDGAR J. LEVEY,
For ASHBEL P. FITCH, *Comptroller, &c.*

Supreme Court of the United States,

OCTOBER TERM, 1895.

THE UNITED STATES,
Plaintiff in Error,

vs.

ASHBEL P. FITCH, Comptroller of the City and County of New York, and JAMES B. FRY and others, as Executors of the Estate of GEORGE W. CULLUM, deceased.

No. 828.

Brief for Ashbel P. Fitch, Comptroller, &c., Defendant in Error.

STATEMENT OF FACTS.

This is a writ of error to the Supreme Court of the State of New York, issued upon the application of the United States to review a decree of the Court of Appeals of the State of New York (Record, folio 64, p. 24), affirming an order of said Supreme Court (folio 57, p. 22), which affirmed an order or decree of the Surrogate of the County of New York (folios 59 *et seq.*, p. 13), assessing and fixing a collateral inheritance tax of $8,755 (folio 66) upon a legacy of $250,000 (valued by the Appraiser at $175,100), bequeathed to the United States by George W. Cullum,

deceased, a resident of New York City (folio 110), in and by his will. The legacy was accepted by Congress (folio 109). George W. Cullum died on the 28th day of February, 1892 (folio 29). The tax was assessed and fixed under Chapter 215 of the Laws of New York for 1891, amending Laws of 1887, Chapter 713, &c. The opinion of the Surrogate will be found at folio 79, p. 16. No opinion was rendered by the Supreme Court, nor in the Court of Appeals, but the orders were substantially affirmed upon the opinion of the last named Court in the matter of Merriam, 141 N. Y., 484.

Our argument to sustain the ruling of the New York Courts is based upon the following propositions:

FIRST.—Inheritance taxes imposed by the several States of the Union are not taxes on property, but taxes or duties on the privilege of succession or inheritance by will or intestacy; and such taxes can be enforced by a State, having jurisdiction of a decedent's estate, against the interest of the United States as legatee.

(*a*) Authorities:

Mager *v.* Grima, 8 How., 490.
Wallace *v.* Myers, 38 Fed. Rep., 184.
Scholey *v.* Rew, 23 Wall., 331.
In re Merriam, 141 N. Y., 484.
In re Cullum, 25 N. Y. Supp., 701; aff'd, 76 Hun, 610, 145 N. Y., 593.
Strode *v.* Com, 52 Pa. St., 182; aff'd in
Carpenter *v.* Penn, 17 How., 456.
Eyre *v.* Jacob, 14 Grat., 428.
Minot *v.* Winthrop, 162 Mass., 113.

State *v.* Hamlin, 86 Me., 495.
Pullen *v.* Com. of Wake Co., 66 N. C., 363.
Dos Passos on Inheritance Tax Law, 2d Ed., 1895, p. 30 *et seq.*, Section 8, Chap. 11; Ch. 11, Sec. 13, citing numerous other authorities.

It does not seem necessary to reply to the argument that the means or instruments of government cannot be taxed by a State, or that a tax cannot be assessed against property which has once vested free therefrom in the United States. No such claim is advanced.

The authorities above cited are but a few of a long line of decisions rendered by this Court and by the highest courts of the several States which have enacted inheritance tax laws, holding uniformly that inheritance taxes are not property taxes, but duties or excises upon the devolution or succession of property under statutes of wills or of intestacy. These decisions are based upon the theory that the right to acquire property from decedents is, after all, a mere privilege of the municipal law, to be changed, modified or repealed in the discretion of the State, and not a natural right.

1 Bl. Comm., bk. 2, pp. 11, 12.

This legal theory, also, accords fully with the economic theory.

Mill's Pol. Econ., bk. ii, Chap. ii, §§ 3, 4.
Ibid., bk v, chap. ii, §§ 3, 7; chap. ix, § 1.
Bentham, Supply without Burden.
Max West, The Inheritance Tax (New York, 1893), p. 112 and authorities cited.
Dos Passos on the Inheritance Tax, 2d Ed., Sec. 2, pp. 5, 6;

and has been approved by the Federal Courts wherever the same has been presented for consideration.

In Mager *v.* Grima, *supra*, the Louisiana tax upon foreign heirs was sustained by the United States Supreme Court as a regulation of inheritance, Chief Justice Taney saying:

"The law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and terms upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. * * * * And if a state may deny the privilege altogether, it follows that, when it grants it, *it may annex to the grant any conditions which it supposes to be required by its interests or policy.*"

On the other hand, while the levying of a succession tax by the United States manifestly could not be explained as regulation of inheritance, the Supreme Court, nevertheless, sustained it as a constitutional exercise of the taxing power, saying:

"It is plainly an excise tax or duty, authorized by section eight of article one, which vests the power in Congress to lay and collect taxes, duties, imposts and excises."

Scholey *v.* Rew, 23 Wall., 331.

Government bonds, state stocks and securities declared by general laws to be exempt from all taxation, have, nevertheless, been uniformly held to fall within the scope of inheritance tax laws.

Wallace *v.* Myers, *supra*, and cases cited.

In Strode *v.* Com. (1851), 52 Pa. St., 181, 189, affirmed in Carpenter *v.* Penn (1854), 17 How., 456, Woodward, C. J., said: "Neither the prohibitory clause of the act of Congress of 1862, nor any of the principles of decision against state authority to tax that which federal authority has exempted from taxation, have any application here. The federal government has not prohibited the state from prescribing rules of inheritance and succession to estates of decedents, and it would be a grievous mistake of legislative and judicial authority to apply it with such effect."

"In view of the federal decisions fixing the status of this form of taxation, it seems absurd to regard succession charges as property taxes * * * It is upon the idea that the tax is the price paid for the privilege of succession that its constitutionality has been upheld when applied to the transmission of United States securities."

Note to Com.'s App.: 32 Am. Law Reg. (N. S.), 366, by John A. McCarthy.

Nor is it correct to regard such a "charge" as a tax which is "direct" even in the common acceptation of the term, or as assessed *in personam*.

In Commonwealth's Appeal (Bittinger's Estate, 1889), 129 Pa. St., 338, Paxson, *J.*, said of the Pennsylvania law (which served as a model for the New York statute): "It may be that the state might impose a succession tax upon every citizen of the state who succeeds to either real or personal property, from whatever source derived. This is not such a tax."

The State Courts have on several occasions admitted the difficulty of defining with exactness the nature of such

taxes, but all have substantially agreed in regarding them as limitations of testamentary power.

"It is called a 'tax' or 'duty,' but has little or no analogy to a tax in the usual acceptation of the term."

Strode *v.* Com., *supra.*

In re Merriam, 141 N. Y., 479, was the authority upon which the New York Court of Appeals decided the matter at bar. Bartlett, *J.*, in an able opinion, said:

"This tax, in effect, limits the power of testamentary disposition, and legatees and devisees take their bequests and devises subject to this tax imposed upon the succession of property. This view eliminates from the case the point argued by the appellant that to collect this tax would be in violation of the well-established rule that the state cannot tax the property of the United States. Assuming this legacy vested in the United States at the moment of testator's death, yet in contemplation of law the tax was fixed on the succession at the same instant of time. This is not a tax imposed by the state on the property of the United States. The property that vests in the United States under this will is the net amount of its legacy after the succession tax is paid."

In the Matter of Fox, 52 N. Y., 530, affirmed in U. S. *v.* Fox, 94 U. S., 315, the decedent devised and bequeathed certain real and personal property to the United States. The State Courts held the devise of realty void and this ruling was affirmed by the United States Supreme Court upon the ground that the disposition of property by descent or any other mode was exclusively subject to the government within whose jurisdiction the property is situated, and on the further ground that the word "person" in the New York statute did not include the United States.

If, therefore, the right of the United States to acquire a

decedent's property has been denied, because a statute of wills did not permit of such a succession, it would seem to follow that when a state does provide for such a succession, it may with propriety limit or condition the terms thereof.

This is what has been done by the New York statute which provides in effect that testators may not dispose of all their property to certain classes of beneficiaries, but only 95 per cent. thereof. As stated by Surrogate Fitzgerald below, "the legislation taxing legacies is not directed against the United States or against the legatees or devisees who receive the benefit. It operates against the person making the will, because it limits his power of testamentary disposition, and it is well settled that it is exclusively within the jurisdiction of the State to legislate upon and regulate the general rights, duties and liabilities of the citizen. Citing

Van Brocklin *v.* Tenn., 117 U. S., 154.
See U. S. *v.* Hillegas, 3 Wash. C. C., 70.

SECOND.—Under Chapter 713 of the New York Session Laws of 1887, as amended by Chapter 215 of the New York Session Laws of 1891, legacies to the United States are subject to a tax, duty or charge of five per cent. for the benefit of the State.

These were the inheritance tax statutes in force at the time of General Cullum's death (Feb. 28th, 1892).

On May 1st, 1892, they were repealed by the new Transfer Tax Law, Chap. 399, L. 1892, but Sec. 24 of the latter act provides for the preservation and enforcement of any "right accruing, accrued or acquired" under the acts

thereby repealed "as fully and to the same extent as if such law had not been repealed."

The tax is imposed upon the transfer of "all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state * * * to any body politic or corporate in trust or otherwise."

Ch. 215, L. 1891, Sec. 1.

By the use of the term "body politic" the United States has been clearly included within the scope of the taxing language.

The United States is a "body politic."

U. S. *v.* Maurice, 2 Brock., 96, 109.

Van Brocklin *v.* State of Tenn., 117 U. S., 154.

Bouvier, defining "body politic," says: "Body politic,—Government, Corporations; when applied to the government, this phrase signifies the State."

In the Maurice case, *supra*, Marshall, C. J., said:

"The United States is a government, and, consequently, a 'body politic' and corporate, capable of attaining the objects for which it was created by the means which are necessary for their attainment."

It is not true, as claimed by the plaintiff in error, that the United States were not vested with the ownership of the legacy charged with a tax in its inception and that a judicial finding by the Surrogate is a necessary prerequisite to the accruing of the tax.

Section 4, Chap. 713, L. 1887, provides that "all taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent."

This legacy vested at the moment of the death and at that moment the burden of the tax likewise attached; so that the United States took *cum onere*.

In the Matter of Prime, 64 Hun, 50, 52, the General Term of the Supreme Court for the First Department had occasion to comment upon the claim that the validity of the tax is to be determined as of the date of its assessment by order of the Surrogate, and Patterson, J., said: "If this were true, there might be force in the argument of the appellants, but the contrary has in substance been held by the Court of Appeals (Matter of Will of Vassar, 127 N. Y., 8). We consider that from the terms of the statute, the right to the tax accrued as of the date of the death of the testator, and hence that the Surrogate was correct in the disposition he made of that objection."

See Hood's App., 9 Harris, 106; Drayton's App., 61 Pa., 76.

THIRD.—The United States are not exempted by the Laws of the State of New York from the burden of the inheritance tax.

If the Court believes the foregoing points of law to be well founded, that the United States is a body politic; that the Legislature of the State of New York has by statute evinced a clear intention to subject to the inheritance tax legacies to bodies politic, and that no constitutional objection can be made to the imposition of such a tax in the case of a legacy to the United States, it follows that the claim of exemption by statutory enactment must be proved with all the strictness required by that elementary canon of statutory construction regarding special exemptions from a general rule of taxation.

This Court will undoubtedly give due weight to the decisions of the New York Court of Appeals in the construction of New York State statutes so far as such construction does not touch upon constitutional questions.

In the Matter of Prime, 136 N. Y., 347, it was held that the exemptions from the inheritance tax provided for by Chap. 553, L. 1890, applied only to domestic corporations organized under the Laws of the State of New York.

This rule has been followed and reaffirmed by the Court of Appeals in the Matter of Belleis, 144 N. Y., 134.

The only other provision for exemption from inheritance tax known to the New York laws is to be found in the tax statute itself.

Section 1, Ch. 713, L. 1887, as amended by Ch. 215, L. 1891, taxes transfers "to any person or persons or to any body politic or corporate * * * * other than or to or for societies, corporations and institutions now exempted by law from taxation."

It may be claimed by the plaintiff in error that the United States is a "corporation exempted by law from taxation."

It should be stated in answer to this that:

(1) For some purposes indeed the United States may be regarded as a "corporation"; but that this clause was not intended to include the Government seems apparent from the preceding portion of the section, *supra*, imposing the tax upon property passing "to any *body politic* or corporate."

The expressions "body politic" and "body corporate" are by no means synonymous, and the use of the disjunctive "or" would seem to indicate that the Legislature intended to give to each expression only that meaning which it strictly bears.

Here "body politic" manifestly comprehends the United States, but the omission of these words in the ex-

emption clause is significant and is not supplied by the words "societies, corporations or institutions."

Had it been intended to include bodies politic in the exemption clause, those words having once been used would have been repeated.

On this ground, among others, the New York Surrogate's Court has very recently held a legacy to the City of New York taxable. *In re* Hamilton, 13 N. Y. Law Journal, 606 (affirmed without opinion by the General Term of the Supreme Court for the First Department).

(2) The expression "exempted *by law* from taxation" applies only to exemption by law of the State of New York.

Catlin *v.* Trustees of Trinity College, 113 N. Y., 133.

To same effect, Minot *v.* Winthrop, 162 Mass., 113.

(3) The "exemption" must be an exemption of the corporation, *eo nomine*, by general law or special charter.

Catlin *v.* Trustees, *supra*,

and the exception from taxation of certain classes o property will not suffice to bring a corporation owning such property within the scope of the exempting clause.

Sherrill *v.* Christ Church, 121 N. Y., 701.

The United States are not exempted from taxation by any statute of the State of New York. While such an exemption might well be considered unnecessary for all property tax purposes, its absence is fatal to the claim for specific exemption under the inheritance tax law.

The Revised Statutes of the State of New York provide for the exemption from taxation of "all lands belonging to this State or the United States."

But this is not an exemption of the United States as a corporation from taxation: since in Sherrill *v.* Christ Church, *supra*, it was held that the exemption from taxation of any building used for public worship did not constitute a general exemption of church corporations from taxation within the meaning of the exception in the Collateral Inheritance Tax Law of "societies, corporations or institutions now exempt by law from taxation."

Finally, it may be said that in New York, at least, it is now a well-settled rule of statutory construction that a statute of a state granting privileges to corporations "must in the absence of plain indication to the contrary, be held to apply only to corporations created by the State, and over which it has the power of visitation and control."

Matter of Prime, 136 N. Y., 356.
Matter of Balleis, 144 N. Y., 134.

Respectfully submitted,

BENJ. F. DOS PASSOS,
EDGAR J. LEVEY,
For Ashbel P. Fitch, Comptroller, &c.

See also the case of In re Hamilton, Court of Appeal, Jany. 28, 1896, Ny. Law Jour. Jany 31, 1896. Opinion by O'Brien J.

MAY 5 1896

In the Supreme Court of the United States.

No. 422.

THE UNITED STATES OF AMERICA AND CLIFFORD B. ACKERLY, AS EXECUTOR OF WILLIAM W. MERRIAM, DECEASED,
Plaintiffs in Error,

vs.

J. HENRY PERKINS, COUNTY TREASURER OF SUFFOLK COUNTY, NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR THE COUNTY TREASURER OF SUFFOLK COUNTY, NEW YORK.

TIMOTHY M. GRIFFING,
Counsel.

The Evening Post Job Printing House, New York.

But this is not an exemption of the United States as a corporation from taxation; since in Sherrill *v.* Christ Church, *supra*, it was held that the exemption from taxation of any building used for public worship did not constitute a general exemption of church corporations from taxation within the meaning of the exception in the Collateral Inheritance Tax Law of "societies, corporations or institutions now exempt by law from taxation."

Finally, it may be said that in New York, at least, it is now a well-settled rule of statutory construction that a statute of a state granting privileges to corporations "must in the absence of plain indication to the contrary, be held to apply only to corporations created by the State, and over which it has the power of visitation and control."

Matter of Prime, 136 N. Y., 356.
Matter of Balleis, 144 N. Y., 134.

Respectfully submitted,

BENJ. F. DOS PASSOS,
EDGAR J. LEVEY,
For Ashbel P. Fitch, Comptroller, &c.

MAY 5 1896

In the Supreme Court of the United States.

No. 422.

THE UNITED STATES OF AMERICA AND CLIFFORD B. ACKERLY, AS EXECUTOR OF WILLIAM W. MERRIAM, DECEASED,
Plaintiffs in Error,

vs.

J. HENRY PERKINS, COUNTY TREASURER OF SUFFOLK COUNTY, NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR THE COUNTY TREASURER OF SUFFOLK COUNTY, NEW YORK.

TIMOTHY M. GRIFFING,
Counsel.

The Evening Post Job Printing House, New York.

IN THE

Supreme Court of the United States.

THE UNITED STATES OF AMERICA and CLIFFORD B. ACKERLY, as Executor of William W. Merriam, deceased, Plaintiffs in Error, vs. J. HENRY PERKINS, County Treasurer of Suffolk County, New York.	No. 422.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR THE COUNTY TREASURER OF SUFFOLK COUNTY, NEW YORK.

Statement.

William W. Merriam, a resident of Suffolk County, New York, died on the 30th day of January, 1889, leaving a last will and testament, which was admitted to probate by the Surrogate of Suffolk County.

The testator devised and bequeathed all his estate, both real and personal, to the United States Government.

Upon the petition of the executor an appraiser was appointed, and upon his report the Surrogate fixed the tax upon the transfer of the personal estate at $3,964.23.

The General Term of the Supreme Court of the Second Judicial Department affirmed the order of the Surrogate's Court, and on appeal to the Court of Appeals of the State of New York the order of the Supreme Court was affirmed and the cause remitted to that Court for final judgment, which was entered on the 31st day of March, 1894.

POINTS.

I.—The tax imposed by Chapter 483 of the Laws of 1885 as amended by Chapter 713 of the Laws of 1887, is not a tax upon the property itself, but on the right of succession. It is a tax upon the privilege of acquiring property by will or inheritance, and is an impost upon the devolution of the estate.

It is conceded that a State has no power to tax the property of the United States, or the means employed by the Government thereof, for the carrying out of its powers, and unless it is held that the tax assessed herein is a tax upon such property or means, then the Government is not exempt from paying the tax assessed.

Neither the prohibition of the acts of Congress nor any of the other principles of the decisions against the State authority to tax that which the Federal authority has excepted from Federal taxation have any application here.

The Federal Government has not prohibited States from prescribing rules of inheritance and succession of estates of decedents.

Prior to the passage of this act. the State permitted the owner to dispose of the same by will upon complying with certain statutory requirements, and in case of his omission to do so, directed the manner in which it should be distributed.

This act imposes a charge for the privilege to beneficiaries of acquiring property which the State by virtue of its power of sovereignty has the right to entirely intercept.

The United States of America having elected to accept the legacy bequeathed by the will of the testator, must take it, charged with the burden to which it is liable.

Matter of Fox, 52 N. Y., 537.
Strode *v.* Com., 52 Pa. St., 182.

In Wallace *et al. vs.* Myers, 38 Fed. Rep., 184, the complainant sought to restrain the defendant from collecting the taxes assessed under the aforesaid laws, based upon the value of certain United States Government bonds, the property of the decedent.

The Court, Wallace, *J.*, held that the tax was not imposed upon the bonds, "but is one upon the privilege of acquiring property by inheritance," and that "such a tax is no more one upon the bonds than an income tax is one upon the property out of which the income is derived, or an excise tax is one upon the articles manufactured or sold." "The bonds are the subject of the appraisal, but the privilege is the subject of the tax."

In Scholey *vs.* Rew, 23 Wall., 331, the Supreme Court of the United States (Clifford, *J.*), in construing the transfer or succession statutes of the United States, held (p. 348) that "the subject matter of the assessment is the devolution of the estate or the right to become beneficially entitled to the same, or the income thereof," and that the succession or devolution of the estate is the subject matter of the tax or duty, and that the question is not affected by the fact that the tax or duty is made a lien upon

the property devised "as the lien is merely an appropriate regulation to secure the collection of the tax."

Scholey *vs.* Rew is cited and approved in Springer *vs.* United States, 102 U. S. R., 602.

Similar statutes have been construed as imposing the tax not on the property, but upon the privilege of acquiring it.

Matter of McPherson, 104 N. Y., 306.
Matter of Swift, 137 N. Y., 77.
Mager *v.* Grima, 8 How. (U. S.), 490.
Eyre *v.* Jacob, 14 Grat., 429.
Matter of Hoffman, 143 N. Y., 327.
Matter of Seaman, 147 N. Y., 69.

The consensus of opinion seems to be that the imposition of the tax in question is not a tax upon the property devised, but upon the privilege of acquiring it. It not being a tax upon the property, can it be said in this instance to be a tax upon the means employed by the Government of the Union for the execution of its powers? Will the imposition of the tax in any way retard, impede, burden or control the operations of the General Government or any act of Congress? The opinion of Marshall, *C. J.*, in McCulloch *vs.* Maryland, 4 Wheat., p. 425, also p. 436, would seem to answer both questions in the negative, and if that is the proper answer, then there can be no doubt about the liability to the tax, and that the legacy is not exempt because devised to the United States of America.

II.—The United States of America is a body politic and is within the nature of Chapter 713, Laws 1877, which specifically provides that the property which shall pass by will or by the interstate laws of this State to any body politic, shall be subject to the acts provided for therein.

United States *v.* Maurice, 2 Brock, 96, 109.

Van Brocklin *v.* State of Tennessee, 117 U. S., 154.

United States *v.* Bradley, 10 Peters, 343.

III.—The State of New York has the right, power and jurisdiction to impose a tax upon the transfer of property, by will, to the United States of America.

United States *v.* Fox, 52 N. Y., 537; affirmed in United States *v.* Fox, 94 U. S., 315.

The State of New York *v.* Miln, 11 Peters, 139.

Moore *v.* Moore, 47 N. Y., 467.

Van Brocklin *v.* Tennessee, *supra.*

TIMOTHY M. GRIFFING,
Counsel for County Treasurer
of Suffolk County.